

AMENDED IN ASSEMBLY AUGUST 9, 2010

AMENDED IN SENATE MARCH 25, 2010

SENATE BILL

No. 1330

**Introduced by Committee on Judiciary (Senators Corbett (Chair),
Hancock, Harman, Leno, and Walters)**

February 19, 2010

An act to amend Sections 31, 490, 490.5, 654.3, 728, 1246, 1301, 3152, 4040, 4076, 4980.44, 4999.2, 4999.7, 6213, 7028, 7108.5, 8520.2, 8676, 8761, 9889.20, 11344, 19596.2, 19850.6, 23356.2, 25503.42, and 25658.4 of, and to amend and renumber Section 19605.10 of, the Business and Professions Code, to amend Sections 1185, 1363.03, and 2954 of the Civil Code, to amend Sections 234 and 425.16 of, and to repeal Sections 128.6, 209, and 349 of, the Code of Civil Procedure, to amend Sections 8971, 14035, 33128.3, 42238, 42605, 42606, 44346.5, 44856, 45103.1, 49701, 52055.770, 52165, 53302, 60852.3, 67302.5, 69458, 69460, 69613, 69999.14, 69999.18, 69999.20, 87482, 88003.1, and 89267.5 of, and to repeal Section 51241 of, the Education Code, to amend Sections 354.5, 2157, 2157.2, 2225, 11100, and 13307 of the Elections Code, to amend Section 1118 of the Evidence Code, to amend Section 7572 of the Family Code, to amend Sections 2089.12, 2089.23, 5655, 9011, and 12013 of the Fish and Game Code, to amend Sections 3884.2, 5931, 6047.12, 15061, and 71031 of the Food and Agricultural Code, to amend Sections 7906, 8588.1, 8879.72, 11011.1, 11011.2, 11126, 12715, 13302, 15491, 15820.911, 16724.5, 16731.6, 22898, 25331, 31855.9, 53601, 56375.2, 56668, 63049.62, 63049.67, 65080, 65583, 66540.12, 66540.32, 70375, 70391, 76000, 76000.5, 76104.6, 91530, and 91533 of the Government Code, to amend Sections 86, 652, 1176, 5864, and 6035 of the Harbors and Navigation Code, to amend Sections 1261.5, 1289.4, 1348.8, 1357, 1357.50, 1358.4, 1358.12, 1358.91, 1367.66, 1418.21, 1429, 1499, 1568.03, 1569.69, 1599.645,

1736.5, 1798.200, 13221, 25396, 44272, 50843.5, 103526.5, 114850, 116064.2, 116540, 124991, 128730, 130060, and 130251 of, and to repeal Section 112877 of, the Health and Safety Code, to amend Sections 38.5, 1063.1, 1063.2, 10136, 10192.4, 10192.81, 10192.12, 10192.20, 10198.6, and 10700 of the Insurance Code, to amend ~~Section~~ *Sections* 226.6 *and* 273 of the Labor Code, to amend Section 699.5 of the Military and Veterans Code, to amend Sections 290.011, 293, 336.9, 597.5, 626.10, 831.5, 851.8, 1000.1, 1120, 1170, 1202.4, 1202.8, 1203.098, 1203.4, 1229, 1230, 1231, 1233.1, 1233.7, 1463.23, 6126.1, 6126.5, 6128, 6131, 11170, 11411, 13821, 13823.16, 13848.6, and 14029.5 of, and to repeal Chapter 3 (commencing with Section 1228) of Title 8 of Part 2 of, the Penal Code, to amend Sections 10100, 10101, 10102, 10103, 10103.5, 10104, 10105, 10262.5, and 10344 of the Public Contract Code, to amend Sections 2621.7, 4590, 5842, 25402.10, 48010, and 48027 of the Public Resources Code, to amend Sections 281, 399.20, 777.1, 851, 2881, 5411, 10009.1, 99233.2, 99312, and 185036 of the Public Utilities Code, to amend Sections 69, 69.3, 276, 6018.6, 6248, 6363.4, 7104, 7104.2, 30461.6, 41007, 41011, 41030, and 41136 of the Revenue and Taxation Code, to amend Sections 149.9 and 30918 of the Streets and Highways Code, to amend Sections 1611 and 10214.6 of the Unemployment Insurance Code, to amend Sections 4465, 4466, 11709.4, 13386, 21455.5, 27602, 40002, and 42001.13 of the Vehicle Code, to amend Sections 10608.24, 10608.44, 10853, 10933, 12645, 12647, and 30779 of the Water Code, to amend Sections 4691, 4860, 5806, 14083, 14085.57, 14105.3, 14132.725, 14154, 14163, 14166.221, 14167.3, 14167.6, 14167.7, 14167.10, 14522.4, 14598, 16124, 18220.1, and 18987.62 of the Welfare and Institutions Code, to amend Section 5.1 of the Castaic Lake Water Agency Law (Chapter 28 of the Statutes of 1962, First Extraordinary Session), to amend Section 1 of the Osteopathic Act, to amend Section 1 of Chapter 226 of the Statutes of 2009, to amend Section 2 of Chapter 405 of the Statutes of 2009, and to amend Section 3 of Chapter 426 of the Statutes of 2009, relating to the maintenance of the codes.

LEGISLATIVE COUNSEL'S DIGEST

SB 1330, as amended, Committee on Judiciary. Maintenance of the codes.

Existing law directs the Legislative Counsel to advise the Legislature from time to time as to legislation necessary to maintain the codes.

This bill would make nonsubstantive changes in various provisions of law to effectuate the recommendations made by the Legislative Counsel to the Legislature.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 31 of the Business and Professions Code
2 is amended to read:

3 31. (a) As used in this section, “board” means any entity listed
4 in Section 101, the entities referred to in Sections 1000 and 3600,
5 the State Bar, the Department of Real Estate, and any other state
6 agency that issues a license, certificate, or registration authorizing
7 a person to engage in a business or profession.

8 (b) Each applicant for the issuance or renewal of a license,
9 certificate, registration, or other means to engage in a business or
10 profession regulated by a board who is not in compliance with a
11 judgment or order for support shall be subject to Section 17520 of
12 the Family Code.

13 (c) “Compliance with a judgment or order for support” has the
14 meaning given in paragraph (4) of subdivision (a) of Section 17520
15 of the Family Code.

16 SEC. 2. Section 490 of the Business and Professions Code is
17 amended to read:

18 490. (a) In addition to any other action that a board is permitted
19 to take against a licensee, a board may suspend or revoke a license
20 on the ground that the licensee has been convicted of a crime, if
21 the crime is substantially related to the qualifications, functions,
22 or duties of the business or profession for which the license was
23 issued.

24 (b) Notwithstanding any other provision of law, a board may
25 exercise any authority to discipline a licensee for conviction of a
26 crime that is independent of the authority granted under subdivision
27 (a) only if the crime is substantially related to the qualifications,
28 functions, or duties of the business or profession for which the
29 licensee’s license was issued.

30 (c) A conviction within the meaning of this section means a
31 plea or verdict of guilty or a conviction following a plea of nolo
32 contendere. An action that a board is permitted to take following

1 the establishment of a conviction may be taken when the time for
2 appeal has elapsed, or the judgment of conviction has been affirmed
3 on appeal, or when an order granting probation is made suspending
4 the imposition of sentence, irrespective of a subsequent order under
5 Section 1203.4 of the Penal Code.

6 (d) The Legislature hereby finds and declares that the application
7 of this section has been made unclear by the holding in *Petropoulos*
8 *v. Department of Real Estate* (2006) 142 Cal.App.4th 554, and
9 that the holding in that case has placed a significant number of
10 statutes and regulations in question, resulting in potential harm to
11 the consumers of California from licensees who have been
12 convicted of crimes. Therefore, the Legislature finds and declares
13 that this section establishes an independent basis for a board to
14 impose discipline upon a licensee, and that the amendments to this
15 section made by Chapter 33 of the Statutes of 2008 do not
16 constitute a change to, but rather are declaratory of, existing law.

17 SEC. 3. Section 490.5 of the Business and Professions Code
18 is amended to read:

19 490.5. A board may suspend a license pursuant to Section
20 17520 of the Family Code if a licensee is not in compliance with
21 a child support order or judgment.

22 SEC. 4. Section 654.3 of the Business and Professions Code
23 is amended to read:

24 654.3. (a) A dentist, or an employee or agent of a dentist, shall
25 not charge treatment or costs to an open-end credit, that is extended
26 by a third party and that is arranged for or established in a dental
27 office, before the date upon which the treatment is rendered or
28 costs are incurred, without first providing the patient a list of the
29 treatment and services to be rendered, the estimated costs of the
30 treatment and services, and which treatment and services are being
31 charged in advance of rendering or incurring of costs, and ensuring
32 that the patient has received the treatment plan required by
33 subdivision (d).

34 (b) A dentist shall, within 15 business days of a patient's request,
35 refund to the lender any payment received through credit extended
36 by a third party that is arranged for or established in a dental office
37 for treatment that has not been rendered or costs that have not been
38 incurred.

39 (c) A dentist, or an employee or agent of that dentist, shall not
40 arrange for or establish credit extended by a third party for a patient

1 without first providing the following written notice, on one page
2 in at least 14-point type, and obtaining a signature from the patient:

3
4 “Credit for Dental Services

5 The attached application and information is for a credit card/line
6 of credit or loan to help you finance your dental treatment. You
7 should know that:

8 You are applying for a ____ credit card/line of credit or a ____
9 loan for \$____.

10 You do not have to apply for the credit card/line of credit or
11 loan. You may pay your dentist for dental treatment in another
12 manner.

13 This credit card/line of credit or loan is not a payment plan with
14 the dental office; it is credit with [name of company issuing the
15 credit card/line of credit or loan]. Your dentist does not work for
16 this company.

17 Before applying for this credit card/line of credit or loan, you
18 have the right to a written treatment plan from your dentist that
19 includes the anticipated treatment to be provided and the estimated
20 costs of each service.

21 If you are approved for a credit card/line of credit, your dentist
22 can only charge treatment and lab costs to that credit card/line of
23 credit when you get the treatment or the dentist incurs costs unless
24 your dentist has first given you a list of treatments that you are
25 paying for in advance and the cost for each treatment or service.

26 You have the right to receive a credit to your credit card/line of
27 credit or loan account refunded for any costs charged to the credit
28 card/line of credit or loan for treatment that has not been rendered
29 or costs that your dentist has not incurred. Your dentist must refund
30 the amount of the charges to the lender within 15 business days
31 of your request, after which the lender will credit your account.

32 Please read carefully the terms and conditions of this credit
33 card/line of credit or loan, including any promotional offers.

34 You may be required to pay interest on the amount charged to
35 the credit card/line of credit or the amount of the loan. If you miss
36 a payment or do not pay on time, you may have to pay a penalty
37 and/or a higher interest rate.

38 If you do not pay the money that you owe the company that
39 provides you with a credit card/line of credit or loan, your missed

1 payments can appear on your credit report and could hurt your
2 credit rating. You could also be sued.

3 [Patient's Signature]"

4
5 (d) A dentist shall give a patient a written treatment plan prior
6 to arranging for or establishing credit extended by a third party.
7 The treatment plan shall include each anticipated service to be
8 provided and the estimated cost of each service. If a patient is
9 covered by a private or government dental benefit plan or dental
10 insurance, from which the dentist takes assignment of benefits,
11 the treatment plan shall indicate the patient's private or
12 government-estimated share of cost for each service. If the dentist
13 does not take assignment of benefits from a patient's dental benefit
14 plan or insurance, the treatment plan shall indicate that the
15 treatment may or may not be covered by a patient's dental benefit
16 or insurance plan, and that the patient has the right to confirm
17 dental benefit or insurance information from the patient's plan,
18 insurer, or employer before beginning treatment.

19 (e) A dentist, or an employee or agent of that dentist, shall not
20 arrange for or establish credit extended by a third party for a patient
21 with whom the dentist, or an employee or agent of that dentist,
22 communicates primarily in a language other than English that is
23 one of the Medi-Cal threshold languages, unless the written notice
24 information required by subdivision (c) is also provided in that
25 language.

26 (f) A dentist, or an employee or agent of that dentist, shall not
27 arrange for or establish credit that is extended by a third party for
28 a patient who has been administered or is under the influence of
29 general anesthesia, conscious sedation, or nitrous oxide.

30 (g) A patient who suffers any damage as a result of the use or
31 employment by any person of a method, act, or practice that
32 willfully violates this section may seek the relief provided by
33 Chapter 4 (commencing with Section 1780) of Title 1.5 of Part 4
34 of Division 3 of the Civil Code.

35 (h) The rights, remedies, and penalties established by this article
36 are cumulative, and shall not supersede the rights, remedies, or
37 penalties established under other laws.

38 (i) For purposes of this section, the following definitions shall
39 apply:

1 (1) “Dentist” includes, but is not limited to, a dental corporation,
2 as defined in Section 1800.

3 (2) “Open-end credit” means credit extended by a creditor under
4 a plan in which the creditor reasonably contemplates repeated
5 transactions, the creditor may impose a finance charge from time
6 to time on an outstanding unpaid balance, and the amount of credit
7 that may be extended to the debtor during the term of the plan (up
8 to any limit set by the creditor) is generally made available to the
9 extent that any outstanding balance is repaid.

10 (3) “Patient” includes, but is not limited to, the patient’s parent
11 or other legal representative.

12 SEC. 5. Section 728 of the Business and Professions Code is
13 amended to read:

14 728. (a) Any psychotherapist or employer of a psychotherapist
15 who becomes aware through a patient that the patient had alleged
16 sexual intercourse or alleged sexual contact with a previous
17 psychotherapist during the course of a prior treatment shall provide
18 to the patient a brochure promulgated by the department that
19 delineates the rights of, and remedies for, patients who have been
20 involved sexually with their psychotherapists. Further, the
21 psychotherapist or employer shall discuss with the patient the
22 brochure prepared by the department.

23 (b) Failure to comply with this section constitutes unprofessional
24 conduct.

25 (c) For the purpose of this section, the following definitions
26 apply:

27 (1) “Psychotherapist” means a physician and surgeon
28 specializing in the practice of psychiatry or practicing
29 psychotherapy, a psychologist, a clinical social worker, a marriage
30 and family therapist, a licensed professional clinical counselor, a
31 psychological assistant, a marriage and family therapist registered
32 intern or trainee, an intern or clinical counselor trainee, as specified
33 in Chapter 16 (commencing with Section 4999.10), or an associate
34 clinical social worker.

35 (2) “Sexual contact” means the touching of an intimate part of
36 another person.

37 (3) “Intimate part” and “touching” have the same meaning as
38 defined in subdivisions (g) and (e), respectively, of Section 243.4
39 of the Penal Code.

1 (4) “The course of a prior treatment” means the period of time
2 during which a patient first commences treatment for services that
3 a psychotherapist is authorized to provide under his or her scope
4 of practice, or that the psychotherapist represents to the patient as
5 being within his or her scope of practice, until the
6 psychotherapist-patient relationship is terminated.

7 SEC. 6. Section 1246 of the Business and Professions Code is
8 amended to read:

9 1246. (a) Except as provided in subdivisions (b) and (c), and
10 in Section 23158 of the Vehicle Code, an unlicensed person
11 employed by a licensed clinical laboratory may perform
12 venipuncture or skin puncture for the purpose of withdrawing
13 blood or for clinical laboratory test purposes upon specific
14 authorization from a licensed physician and surgeon provided that
15 he or she meets both of the following requirements:

16 (1) He or she works under the supervision of a person licensed
17 under this chapter or of a licensed physician and surgeon or of a
18 licensed registered nurse. A person licensed under this chapter, a
19 licensed physician or surgeon, or a registered nurse shall be
20 physically available to be summoned to the scene of the
21 venipuncture within five minutes during the performance of those
22 procedures.

23 (2) He or she has been trained by a licensed physician and
24 surgeon or by a clinical laboratory bioanalyst in the proper
25 procedure to be employed when withdrawing blood in accordance
26 with training requirements established by the department and has
27 a statement signed by the instructing physician and surgeon or by
28 the instructing clinical laboratory bioanalyst that the training has
29 been successfully completed.

30 (b) (1) On and after the effective date of the regulations
31 specified in paragraph (2), any unlicensed person employed by a
32 clinical laboratory performing the duties described in this section
33 shall possess a valid and current certification as a certified
34 phlebotomy technician issued by the department. However, an
35 unlicensed person employed by a clinical laboratory to perform
36 these duties pursuant to subdivision (a) on that date shall have until
37 January 1, 2007, to comply with this requirement, provided that
38 he or she has submitted the application to the department on or
39 before July 1, 2006.

1 (2) The department shall adopt regulations for certification by
2 January 1, 2001, as a certified phlebotomy technician that shall
3 include all of the following:

4 (A) The applicant shall hold a valid, current certification as a
5 phlebotomist issued by a national accreditation agency approved
6 by the department, and shall submit proof of that certification when
7 applying for certification pursuant to this section.

8 (B) The applicant shall complete education, training, and
9 experience requirements as specified by regulations that shall
10 include, but not be limited to, the following:

11 (i) At least 40 hours of didactic instruction.

12 (ii) At least 40 hours of practical instruction.

13 (iii) At least 50 successful venipunctures.

14 However, an applicant who has been performing these duties
15 pursuant to subdivision (a) may be exempted from the requirements
16 specified in clauses (ii) and (iii), and from 20 hours of the 40 hours
17 of didactic instruction as specified in clause (i), if he or she has at
18 least 1,040 hours of work experience, as specified in regulations
19 adopted by the department.

20 It is the intent of the Legislature to permit persons performing
21 these duties pursuant to subdivision (a) to use educational leave
22 provided by their employers for purposes of meeting the
23 requirements of this section.

24 (C) Each certified phlebotomy technician shall complete at least
25 three hours per year or six hours every two years of continuing
26 education or training. The department shall consider a variety of
27 programs in determining the programs that meet the continuing
28 education or training requirement.

29 (D) He or she has been found to be competent in phlebotomy
30 by a licensed physician and surgeon or person licensed pursuant
31 to this chapter.

32 (E) He or she works under the supervision of a licensed
33 physician and surgeon, licensed registered nurse, or person licensed
34 under this chapter, or the designee of a licensed physician and
35 surgeon or the designee of a person licensed under this chapter.

36 (3) The department shall adopt regulations establishing standards
37 for approving training programs designed to prepare applicants
38 for certification pursuant to this section. The standards shall ensure
39 that these programs meet the state's minimum education and
40 training requirements for comparable programs.

1 (4) The department shall adopt regulations establishing standards
2 for approving national accreditation agencies to administer
3 certification examinations and tests pursuant to this section.

4 (5) The department shall charge fees for application for and
5 renewal of the certificate authorized by this section of no more
6 than one hundred dollars (\$100) for a two-year period.

7 (c) (1) (A) A certified phlebotomy technician may perform
8 venipuncture or skin puncture to obtain a specimen for
9 nondiagnostic tests assessing the health of an individual, for
10 insurance purposes, provided that the technician works under the
11 general supervision of a physician and surgeon licensed under
12 Chapter 5 (commencing with Section 2000). The physician and
13 surgeon may delegate the general supervision duties to a registered
14 nurse or a person licensed under this chapter, but shall remain
15 responsible for ensuring that all those duties and responsibilities
16 are properly performed. The physician and surgeon shall make
17 available to the department, upon request, records maintained
18 documenting when a certified phlebotomy technician has
19 performed venipuncture or skin puncture pursuant to this
20 paragraph.

21 (B) As used in this paragraph, general supervision requires the
22 supervisor of the technician to determine that the technician is
23 competent to perform venipuncture or skin puncture prior to the
24 technician's first blood withdrawal, and on an annual basis
25 thereafter. The supervisor is also required to determine, on a
26 monthly basis, that the technician complies with appropriate
27 venipuncture or skin puncture policies and procedures approved
28 by the medical director and required by state regulations. The
29 supervisor, or another designated licensed physician and surgeon,
30 registered nurse, or person licensed under this chapter, shall be
31 available for consultation with the technician, either in person or
32 through telephonic or electronic means, at the time of blood
33 withdrawal.

34 (2) (A) Notwithstanding any other provision of law, a person
35 who has been issued a certified phlebotomy technician certificate
36 pursuant to this section may draw blood following policies and
37 procedures approved by a physician and surgeon licensed under
38 Chapter 5 (commencing with Section 2000), appropriate to the
39 location where the blood is being drawn and in accordance with
40 state regulations. The blood collection shall be done at the request

1 and in the presence of a peace officer for forensic purposes in a
2 jail, law enforcement facility, or medical facility, with general
3 supervision.

4 (B) As used in this paragraph, “general supervision” means that
5 the supervisor of the technician is licensed under this code as a
6 physician and surgeon, physician assistant, clinical laboratory
7 bioanalyst, registered nurse, or clinical laboratory scientist, and
8 reviews the competency of the technician before the technician
9 may perform blood withdrawals without direct supervision, and
10 on an annual basis thereafter. The supervisor is also required to
11 review the work of the technician at least once a month to ensure
12 compliance with venipuncture policies, procedures, and regulations.
13 The supervisor, or another person licensed under this code as a
14 physician and surgeon, physician assistant, clinical laboratory
15 bioanalyst, registered nurse, or clinical laboratory scientist, shall
16 be accessible to the location where the technician is working to
17 provide onsite, telephone, or electronic consultation, within 30
18 minutes when needed.

19 (d) The department may adopt regulations providing for the
20 issuance of a certificate to an unlicensed person employed by a
21 clinical laboratory authorizing only the performance of skin
22 punctures for test purposes.

23 SEC. 7. Section 1301 of the Business and Professions Code is
24 amended to read:

25 1301. (a) The annual renewal fee for a clinical laboratory
26 license or registration set under this chapter shall be paid during
27 the 30-day period before the expiration date of the license or
28 registration. If the license or registration is not renewed before the
29 expiration date, the licensee or registrant, as a condition precedent
30 to renewal, shall pay a delinquency fee equal to 25 percent of the
31 annual renewal fee for up to 60 days after the expiration date, in
32 addition to the annual renewal fee in effect on the last preceding
33 regular renewal date. Failure to pay the annual renewal fee in
34 advance during the time the license or registration remains in force
35 shall, ipso facto, work a forfeiture of the license or registration
36 after a period of 60 days from the expiration date of the license or
37 registration.

38 (b) (1) The department shall give written notice to all persons
39 licensed pursuant to Section 1260, 1260.1, 1261, 1261.5, 1262,
40 1264, or 1270 30 days in advance of the regular renewal date that

1 a renewal fee has not been paid. In addition, the department shall
2 give written notice to licensed clinical laboratory bioanalysts or
3 doctoral degree specialists and clinical laboratory scientists or
4 limited clinical laboratory scientists by registered or certified mail
5 90 days in advance of the expiration of the fifth year that a renewal
6 fee has not been paid and if not paid before the expiration of the
7 fifth year of delinquency the licensee may be subject to
8 reexamination.

9 (2) If the renewal fee is not paid for five or more years, the
10 department may require an examination before reinstating the
11 license, except that no examination shall be required as a condition
12 for reinstatement if the original license was issued without an
13 examination. No examination shall be required for reinstatement
14 if the license was forfeited solely by reason of nonpayment of the
15 renewal fee if the nonpayment was for less than five years.

16 (3) If the license is not renewed within 60 days after its
17 expiration, the licensee, as a condition precedent to renewal, shall
18 pay the delinquency fee identified in subdivision (k) of Section
19 1300, in addition to the renewal fee in effect on the last preceding
20 regular renewal date. Payment of the delinquency fee will not be
21 necessary if within 60 days of the license expiration date the
22 licensee files with the department an application for inactive status.

23 SEC. 8. Section 3152 of the Business and Professions Code is
24 amended to read:

25 3152. The amounts of fees and penalties prescribed by this
26 chapter shall be established by the board in amounts not greater
27 than those specified in the following schedule:

28 (a) The fee for applicants applying for a license shall not exceed
29 two hundred seventy-five dollars (\$275).

30 (b) The fee for renewal of an optometric license shall not exceed
31 five hundred dollars (\$500).

32 (c) The annual fee for the renewal of a branch office license
33 shall not exceed seventy-five dollars (\$75).

34 (d) The fee for a branch office license shall not exceed
35 seventy-five dollars (\$75).

36 (e) The penalty for failure to pay the annual fee for renewal of
37 a branch office license shall not exceed twenty-five dollars (\$25).

38 (f) The fee for issuance of a license or upon change of name
39 authorized by law of a person holding a license under this chapter
40 shall not exceed twenty-five dollars (\$25).

1 (g) The delinquency fee for renewal of an optometric license
2 shall not exceed fifty dollars (\$50).

3 (h) The application fee for a certificate to perform lacrimal
4 irrigation and dilation shall not exceed fifty dollars (\$50).

5 (i) The application fee for a certificate to treat glaucoma shall
6 not exceed fifty dollars (\$50).

7 (j) The fee for approval of a continuing education course shall
8 not exceed one hundred dollars (\$100).

9 (k) The fee for issuance of a statement of licensure shall not
10 exceed forty dollars (\$40).

11 (l) The fee for biennial renewal of a statement of licensure shall
12 not exceed forty dollars (\$40).

13 (m) The delinquency fee for renewal of a statement of licensure
14 shall not exceed twenty dollars (\$20).

15 (n) The application fee for a fictitious name permit shall not
16 exceed fifty dollars (\$50).

17 (o) The renewal fee for a fictitious name permit shall not exceed
18 fifty dollars (\$50).

19 (p) The delinquency fee for renewal of a fictitious name permit
20 shall not exceed twenty-five dollars (\$25).

21 SEC. 9. Section 4040 of the Business and Professions Code is
22 amended to read:

23 4040. (a) “Prescription” means an oral, written, or electronic
24 transmission order that is both of the following:

25 (1) Given individually for the person or persons for whom
26 ordered that includes all of the following:

27 (A) The name or names and address of the patient or patients.

28 (B) The name and quantity of the drug or device prescribed and
29 the directions for use.

30 (C) The date of issue.

31 (D) Either rubber stamped, typed, or printed by hand or typeset,
32 the name, address, and telephone number of the prescriber, his or
33 her license classification, and his or her federal registry number,
34 if a controlled substance is prescribed.

35 (E) A legible, clear notice of the condition or purpose for which
36 the drug is being prescribed, if requested by the patient or patients.

37 (F) If in writing, signed by the prescriber issuing the order, or
38 the certified nurse-midwife, nurse practitioner, physician assistant,
39 or naturopathic doctor who issues a drug order pursuant to Section
40 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist

1 who issues a drug order pursuant to either Section 4052.1 or
2 4052.2.

3 (2) Issued by a physician, dentist, optometrist, podiatrist,
4 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or,
5 if a drug order is issued pursuant to Section 2746.51, 2836.1,
6 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner,
7 physician assistant, or naturopathic doctor licensed in this state,
8 or pursuant to either Section 4052.1 or 4052.2 by a pharmacist
9 licensed in this state.

10 (b) Notwithstanding subdivision (a), a written order of the
11 prescriber for a dangerous drug, except for any Schedule II
12 controlled substance, that contains at least the name and signature
13 of the prescriber, the name and address of the patient in a manner
14 consistent with paragraph (2) of subdivision (a) of Section 11164
15 of the Health and Safety Code, the name and quantity of the drug
16 prescribed, directions for use, and the date of issue may be treated
17 as a prescription by the dispensing pharmacist as long as any
18 additional information required by subdivision (a) is readily
19 retrievable in the pharmacy. In the event of a conflict between this
20 subdivision and Section 11164 of the Health and Safety Code,
21 Section 11164 of the Health and Safety Code shall prevail.

22 (c) “Electronic transmission prescription” includes both image
23 and data prescriptions. “Electronic image transmission
24 prescription” means any prescription order for which a facsimile
25 of the order is received by a pharmacy from a licensed prescriber.
26 “Electronic data transmission prescription” means any prescription
27 order, other than an electronic image transmission prescription,
28 that is electronically transmitted from a licensed prescriber to a
29 pharmacy.

30 (d) The use of commonly used abbreviations shall not invalidate
31 an otherwise valid prescription.

32 (e) Nothing in the amendments made to this section (formerly
33 Section 4036) at the 1969 Regular Session of the Legislature shall
34 be construed as expanding or limiting the right that a chiropractor,
35 while acting within the scope of his or her license, may have to
36 prescribe a device.

37 SEC. 10. Section 4076 of the Business and Professions Code
38 is amended to read:

1 4076. (a) A pharmacist shall not dispense any prescription
2 except in a container that meets the requirements of state and
3 federal law and is correctly labeled with all of the following:

4 (1) Except where the prescriber or the certified nurse-midwife
5 who functions pursuant to a standardized procedure or protocol
6 described in Section 2746.51, the nurse practitioner who functions
7 pursuant to a standardized procedure described in Section 2836.1
8 or protocol, the physician assistant who functions pursuant to
9 Section 3502.1, the naturopathic doctor who functions pursuant
10 to a standardized procedure or protocol described in Section
11 3640.5, or the pharmacist who functions pursuant to a policy,
12 procedure, or protocol pursuant to either Section 4052.1 or 4052.2
13 orders otherwise, either the manufacturer's trade name of the drug
14 or the generic name and the name of the manufacturer. Commonly
15 used abbreviations may be used. Preparations containing two or
16 more active ingredients may be identified by the manufacturer's
17 trade name or the commonly used name or the principal active
18 ingredients.

19 (2) The directions for the use of the drug.

20 (3) The name of the patient or patients.

21 (4) The name of the prescriber or, if applicable, the name of the
22 certified nurse-midwife who functions pursuant to a standardized
23 procedure or protocol described in Section 2746.51, the nurse
24 practitioner who functions pursuant to a standardized procedure
25 described in Section 2836.1 or protocol, the physician assistant
26 who functions pursuant to Section 3502.1, the naturopathic doctor
27 who functions pursuant to a standardized procedure or protocol
28 described in Section 3640.5, or the pharmacist who functions
29 pursuant to a policy, procedure, or protocol pursuant to either
30 Section 4052.1 or 4052.2.

31 (5) The date of issue.

32 (6) The name and address of the pharmacy, and prescription
33 number or other means of identifying the prescription.

34 (7) The strength of the drug or drugs dispensed.

35 (8) The quantity of the drug or drugs dispensed.

36 (9) The expiration date of the effectiveness of the drug
37 dispensed.

38 (10) The condition or purpose for which the drug was prescribed
39 if the condition or purpose is indicated on the prescription.

1 (11) (A) Commencing January 1, 2006, the physical description
2 of the dispensed medication, including its color, shape, and any
3 identification code that appears on the tablets or capsules, except
4 as follows:

5 (i) Prescriptions dispensed by a veterinarian.

6 (ii) An exemption from the requirements of this paragraph shall
7 be granted to a new drug for the first 120 days that the drug is on
8 the market and for the 90 days during which the national reference
9 file has no description on file.

10 (iii) Dispensed medications for which no physical description
11 exists in any commercially available database.

12 (B) This paragraph applies to outpatient pharmacies only.

13 (C) The information required by this paragraph may be printed
14 on an auxiliary label that is affixed to the prescription container.

15 (D) This paragraph shall not become operative if the board,
16 prior to January 1, 2006, adopts regulations that mandate the same
17 labeling requirements set forth in this paragraph.

18 (b) If a pharmacist dispenses a prescribed drug by means of a
19 unit dose medication system, as defined by administrative
20 regulation, for a patient in a skilled nursing, intermediate care, or
21 other health care facility, the requirements of this section will be
22 satisfied if the unit dose medication system contains the
23 aforementioned information or the information is otherwise readily
24 available at the time of drug administration.

25 (c) If a pharmacist dispenses a dangerous drug or device in a
26 facility licensed pursuant to Section 1250 of the Health and Safety
27 Code, it is not necessary to include on individual unit dose
28 containers for a specific patient, the name of the certified
29 nurse-midwife who functions pursuant to a standardized procedure
30 or protocol described in Section 2746.51, the nurse practitioner
31 who functions pursuant to a standardized procedure described in
32 Section 2836.1 or protocol, the physician assistant who functions
33 pursuant to Section 3502.1, the naturopathic doctor who functions
34 pursuant to a standardized procedure or protocol described in
35 Section 3640.5, or the pharmacist who functions pursuant to a
36 policy, procedure, or protocol pursuant to either Section 4052.1
37 or 4052.2.

38 (d) If a pharmacist dispenses a prescription drug for use in a
39 facility licensed pursuant to Section 1250 of the Health and Safety
40 Code, it is not necessary to include the information required in

paragraph (11) of subdivision (a) when the prescription drug is administered to a patient by a person licensed under the Medical Practice Act (Chapter 5 (commencing with Section 2000)), the Nursing Practice Act (Chapter 6 (commencing with Section 2700)), or the Vocational Nursing Practice Act (Chapter 6.5 (commencing with Section 2840)), who is acting within his or her scope of practice.

SEC. 11. Section 4980.44 of the Business and Professions Code is amended to read:

4980.44. An unlicensed marriage and family therapist intern employed under this chapter shall comply with the following requirements:

(a) Possess, at a minimum, a master's degree as specified in Section 4980.36 or 4980.37, as applicable.

(b) Register with the board prior to performing any duties, except as otherwise provided in subdivision (g) of Section 4980.43.

(c) Inform each client or patient prior to performing any professional services that he or she is unlicensed and under the supervision of a licensed marriage and family therapist, licensed clinical social worker, licensed psychologist, or a licensed physician and surgeon certified in psychiatry by the American Board of Psychiatry and Neurology.

SEC. 12. Section 4999.2 of the Business and Professions Code is amended to read:

4999.2. (a) In order to obtain and maintain a registration, in-state or out-of-state telephone medical advice services shall comply with the requirements established by the department. Those requirements shall include, but shall not be limited to, all of the following:

(1) (A) Ensuring that all staff who provide medical advice services are appropriately licensed, certified, or registered as a physician and surgeon pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act, as a dentist, dental hygienist, dental hygienist in alternative practice, or dental hygienist in extended functions pursuant to Chapter 4 (commencing with Section 1600), as an occupational therapist pursuant to Chapter 5.6 (commencing with Section 2570), as a registered nurse pursuant to Chapter 6 (commencing with Section 2700), as a psychologist pursuant to Chapter 6.6 (commencing with Section 2900), as a marriage and family therapist pursuant to Chapter 13

(commencing with Section 4980), as a licensed clinical social worker pursuant to Chapter 14 (commencing with Section 4991), as an optometrist pursuant to Chapter 7 (commencing with Section 3000), or as a chiropractor pursuant to the Chiropractic Initiative Act, and operating consistent with the laws governing their respective scopes of practice in the state within which they provide telephone medical advice services, except as provided in paragraph (2).

(B) Ensuring that all staff who provide telephone medical advice services from an out-of-state location are health care professionals, as identified in subparagraph (A), who are licensed, registered, or certified in the state within which they are providing the telephone medical advice services and are operating consistent with the laws governing their respective scopes of practice.

(2) Ensuring that the telephone medical advice provided is consistent with good professional practice.

(3) Maintaining records of telephone medical advice services, including records of complaints, provided to patients in California for a period of at least five years.

(4) Ensuring that no staff member uses a title or designation when speaking to an enrollee or subscriber that may cause a reasonable person to believe that the staff member is a licensed, certified, or registered professional described in subparagraph (A) of paragraph (1), unless the staff member is a licensed, certified, or registered professional.

(5) Complying with all directions and requests for information made by the department.

(b) To the extent permitted by Article VII of the California Constitution, the department may contract with a private nonprofit accrediting agency to evaluate the qualifications of applicants for registration pursuant to this chapter and to make recommendations to the department.

SEC. 13. Section 4999.7 of the Business and Professions Code is amended to read:

4999.7. (a) This section does not limit, preclude, or otherwise interfere with the practices of other persons licensed or otherwise authorized to practice, under any other provision of this division, telephone medical advice services consistent with the laws governing their respective scopes of practice, or licensed under the Osteopathic Initiative Act or the Chiropractic Initiative Act

1 and operating consistent with the laws governing their respective
2 scopes of practice.

3 (b) For purposes of this chapter, “telephone medical advice”
4 means a telephonic communication between a patient and a health
5 care professional in which the health care professional’s primary
6 function is to provide to the patient a telephonic response to the
7 patient’s questions regarding his or her or a family member’s
8 medical care or treatment. “Telephone medical advice” includes
9 assessment, evaluation, or advice provided to patients or their
10 family members.

11 (c) For purposes of this chapter, “health care professional” is a
12 staff person described in Section 4999.2 who provides medical
13 advice services and is appropriately licensed, certified, or registered
14 as a dentist, dental hygienist, dental hygienist in alternative
15 practice, or dental hygienist in extended functions pursuant to
16 Chapter 4 (commencing with Section 1600), as a physician and
17 surgeon pursuant to Chapter 5 (commencing with Section 2000)
18 or the Osteopathic Initiative Act, as a registered nurse pursuant to
19 Chapter 6 (commencing with Section 2700), as a psychologist
20 pursuant to Chapter 6.6 (commencing with Section 2900), as an
21 optometrist pursuant to Chapter 7 (commencing with Section
22 3000), as a marriage and family therapist pursuant to Chapter 13
23 (commencing with Section 4980), as a licensed clinical social
24 worker pursuant to Chapter 14 (commencing with Section 4991),
25 or as a chiropractor pursuant to the Chiropractic Initiative Act, and
26 who is operating consistent with the laws governing his or her
27 respective scopes of practice in the state in which he or she
28 provides telephone medical advice services.

29 SEC. 14. Section 6213 of the Business and Professions Code
30 is amended to read:

31 6213. As used in this article:

32 (a) “Qualified legal services project” means either of the
33 following:

34 (1) A nonprofit project incorporated and operated exclusively
35 in California that provides as its primary purpose and function
36 legal services without charge to indigent persons and that has
37 quality control procedures approved by the State Bar of California.

38 (2) A program operated exclusively in California by a nonprofit
39 law school accredited by the State Bar of California that meets the
40 requirements of subparagraphs (A) and (B).

1 (A) The program shall have operated for at least two years at a
2 cost of at least twenty thousand dollars (\$20,000) per year as an
3 identifiable law school unit with a primary purpose and function
4 of providing legal services without charge to indigent persons.

5 (B) The program shall have quality control procedures approved
6 by the State Bar of California.

7 (b) “Qualified support center” means an incorporated nonprofit
8 legal services center that has as its primary purpose and function
9 the provision of legal training, legal technical assistance, or
10 advocacy support without charge and which actually provides
11 through an office in California a significant level of legal training,
12 legal technical assistance, or advocacy support without charge to
13 qualified legal services projects on a statewide basis in California.

14 (c) “Recipient” means a qualified legal services project or
15 support center receiving financial assistance under this article.

16 (d) “Indigent person” means a person whose income is (1) 125
17 percent or less of the current poverty threshold established by the
18 United States Office of Management and Budget, or (2) who is
19 eligible for Supplemental Security Income or free services under
20 the Older Americans Act or Developmentally Disabled Assistance
21 Act. With regard to a project that provides free services of attorneys
22 in private practice without compensation, “indigent person” also
23 means a person whose income is 75 percent or less of the maximum
24 levels of income for lower income households as defined in Section
25 50079.5 of the Health and Safety Code. For the purpose of this
26 subdivision, the income of a person who is disabled shall be
27 determined after deducting the costs of medical and other
28 disability-related special expenses.

29 (e) “Fee generating case” means a case or matter that, if
30 undertaken on behalf of an indigent person by an attorney in private
31 practice, reasonably may be expected to result in payment of a fee
32 for legal services from an award to a client, from public funds, or
33 from the opposing party. A case shall not be considered fee
34 generating if adequate representation is unavailable and any of the
35 following circumstances exist:

36 (1) The recipient has determined that free referral is not possible
37 because of any of the following reasons:

38 (A) The case has been rejected by the local lawyer referral
39 service, or if there is no such service, by two attorneys in private
40 practice who have experience in the subject matter of the case.

1 (B) Neither the referral service nor any attorney will consider
2 the case without payment of a consultation fee.

3 (C) The case is of the type that attorneys in private practice in
4 the area ordinarily do not accept, or do not accept without
5 prepayment of a fee.

6 (D) Emergency circumstances compel immediate action before
7 referral can be made, but the client is advised that, if appropriate
8 and consistent with professional responsibility, referral will be
9 attempted at a later time.

10 (2) Recovery of damages is not the principal object of the case
11 and a request for damages is merely ancillary to an action for
12 equitable or other nonpecuniary relief, or inclusion of a
13 counterclaim requesting damages is necessary for effective defense
14 or because of applicable rules governing joinder of counterclaims.

15 (3) A court has appointed a recipient or an employee of a
16 recipient pursuant to a statute or a court rule or practice of equal
17 applicability to all attorneys in the jurisdiction.

18 (4) The case involves the rights of a claimant under a publicly
19 supported benefit program for which entitlement to benefit is based
20 on need.

21 (f) “Legal Services Corporation” means the Legal Services
22 Corporation established under the Legal Services Corporation Act
23 of 1974 (P.L. 93-355; 42 U.S.C. Sec. 2996 et seq.).

24 (g) “Older Americans Act” means the Older Americans Act of
25 1965, as amended (P.L. 89-73; 42 U.S.C. Sec. 3001 et seq.).

26 (h) “Developmentally Disabled Assistance Act” means the
27 Developmentally Disabled Assistance and Bill of Rights Act, as
28 amended (P.L. 94-103; 42 U.S.C. Sec. 6001 et seq.).

29 (i) “Supplemental security income recipient” means an
30 individual receiving or eligible to receive payments under Title
31 XVI of the federal Social Security Act, or payments under Chapter
32 3 (commencing with Section 12000) of Part 3 of Division 9 of the
33 Welfare and Institutions Code.

34 (j) “IOLTA account” means an account or investment product
35 established and maintained pursuant to subdivision (a) of Section
36 6211 that is any of the following:

37 (1) An interest-bearing checking account.

38 (2) An investment sweep product that is a daily (overnight)
39 financial institution repurchase agreement or an open-end money
40 market fund.

1 (3) An investment product authorized by California Supreme
2 Court rule or order.

3 A daily financial institution repurchase agreement shall be fully
4 collateralized by United States Government Securities or other
5 comparably conservative debt securities, and may be established
6 only with any eligible institution that is “well-capitalized” or
7 “adequately capitalized” as those terms are defined by applicable
8 federal statutes and regulations. An open-end money market fund
9 shall be invested solely in United States Government Securities
10 or repurchase agreements fully collateralized by United States
11 Government Securities or other comparably conservative debt
12 securities, shall hold itself out as a “money market fund” as that
13 term is defined by federal statutes and regulations under the
14 Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.),
15 and, at the time of the investment, shall have total assets of at least
16 two hundred fifty million dollars (\$250,000,000).

17 (k) “Eligible institution” means either of the following:

18 (1) A bank, savings and loan, or other financial institution
19 regulated by a federal or state agency that pays interest or dividends
20 in the IOLTA account and carries deposit insurance from an agency
21 of the federal government.

22 (2) Any other type of financial institution authorized by the
23 California Supreme Court.

24 SEC. 15. Section 7028 of the Business and Professions Code
25 is amended to read:

26 7028. (a) It is a misdemeanor for a person to engage in the
27 business or act in the capacity of a contractor within this state
28 without having a license therefor, unless the person is particularly
29 exempted from the provisions of this chapter.

30 (b) A first conviction for the offense described in this section
31 is punishable by a fine not exceeding five thousand dollars (\$5,000)
32 or by imprisonment in a county jail not exceeding six months, or
33 by both that fine and imprisonment.

34 (c) If a person has been previously convicted of the offense
35 described in this section, unless the provisions of subdivision (d)
36 are applicable, the court shall impose a fine of 20 percent of the
37 contract price, or 20 percent of the aggregate payments made to,
38 or at the direction of, the unlicensed contractor, or five thousand
39 dollars (\$5,000), whichever is greater, and, unless the sentence
40 prescribed in subdivision (d) is imposed, the person shall be

1 confined in a county jail for not less than 90 days, except in an
2 unusual case where the interests of justice would be served by
3 imposition of a lesser sentence or a fine. If the court imposes only
4 a fine or a jail sentence of less than 90 days for second or
5 subsequent convictions under this section, the court shall state the
6 reasons for its sentencing choice on the record.

7 (d) A third or subsequent conviction for the offense described
8 in this section is punishable by a fine of not less than five thousand
9 dollars (\$5,000) nor more than the greater amount of ten thousand
10 dollars (\$10,000) or 20 percent of the contract price, or 20 percent
11 of the aggregate payments made to, or at the direction of, the
12 unlicensed contractor, and by imprisonment in a county jail for
13 not more than one year or less than 90 days. The penalty provided
14 by this subdivision is cumulative to the penalties available under
15 all other laws of this state.

16 (e) A person who violates this section is subject to the penalties
17 prescribed in subdivision (d) if the person was named on a license
18 that was previously revoked and, either in fact or under law, was
19 held responsible for any act or omission resulting in the revocation.

20 (f) If the person engaging in the business of or acting in the
21 capacity of an unlicensed contractor has agreed to furnish materials
22 and labor on an hourly basis, “the contract price” for the purposes
23 of this section means the aggregate sum of the cost of materials
24 and labor furnished and the cost of completing the work to be
25 performed.

26 (g) Notwithstanding any other provision of law, an indictment
27 for any violation of this section by the unlicensed contractor shall
28 be found or an information or complaint filed within four years
29 from the date of the contract proposal, contract, completion, or
30 abandonment of the work, whichever occurs last.

31 (h) For any conviction under this section, a person who utilized
32 the services of the unlicensed contractor is a victim of crime and
33 is eligible, pursuant to subdivision (f) of Section 1202.4 of the
34 Penal Code, for restitution for economic losses, regardless of
35 whether that person had knowledge that the contractor was
36 unlicensed.

37 SEC. 16. Section 7108.5 of the Business and Professions Code
38 is amended to read:

1 7108.5. (a) This section applies to all private works of
2 improvement and to all public works of improvement, except where
3 Section 10262 of the Public Contract Code applies.

4 (b) Except as provided in subdivision (c), a prime contractor or
5 subcontractor shall pay to any subcontractor, not later than 10 days
6 after receipt of each progress payment, unless otherwise agreed to
7 in writing, the respective amounts allowed the contractor on
8 account of the work performed by the subcontractors, to the extent
9 of each subcontractor's interest therein. A prime contractor or
10 subcontractor that fails to comply with this subdivision shall be
11 subject to a penalty, payable to the subcontractor, of 2 percent of
12 the amount due per month for every month that payment is not
13 made as required under this subdivision.

14 (c) If there is a good faith dispute over all or any portion of the
15 amount due on a progress payment from the prime contractor or
16 subcontractor to a subcontractor, the prime contractor or
17 subcontractor may withhold no more than 150 percent of the
18 disputed amount.

19 (d) A violation of this section shall constitute a cause for
20 disciplinary action.

21 (e) In any action for the collection of funds wrongfully withheld,
22 the prevailing party shall be entitled to his or her attorney's fees
23 and costs.

24 (f) The sanctions authorized under this section shall be separate
25 from, and in addition to, all other remedies, either civil,
26 administrative, or criminal.

27 SEC. 17. Section 8520.2 of the Business and Professions Code
28 is amended to read:

29 8520.2. (a) The Structural Pest Control Board is hereby
30 transferred from the jurisdiction of the Department of Consumer
31 Affairs and placed under the jurisdiction of the Department of
32 Pesticide Regulation.

33 (b) The registrar of the board under the jurisdiction of the
34 Department of Consumer Affairs shall remain as the registrar of
35 the board under the jurisdiction of the Department of Pesticide
36 Regulation.

37 (c) The members appointed to the board while under the
38 jurisdiction of the Department of Consumer Affairs shall remain
39 as members of the board under the jurisdiction of the Department
40 of Pesticide Regulation.

1 (d) All employees of the board under the jurisdiction of the
2 Department of Consumer Affairs are hereby transferred to the
3 board under the jurisdiction of the Department of Pesticide
4 Regulation.

5 (e) The duties, powers, purposes, responsibilities, and
6 jurisdictions of the board under the jurisdiction of the Department
7 of Consumer Affairs shall remain with the board under the
8 jurisdiction of the Department of Pesticide Regulation.

9 (f) For the performance of the duties and the exercise of the
10 powers vested in the board under this chapter, the board shall have
11 possession and control of all records, papers, offices, equipment,
12 supplies, or other property, real or personal, held for the benefit
13 or use by the board formerly within the jurisdiction of the
14 Department of Consumer Affairs.

15 (g) Any reference to the board in this chapter or in any other
16 provision of law or regulation shall be construed as a reference to
17 the board under the jurisdiction of the Department of Pesticide
18 Regulation.

19 SEC. 18. Section 8676 of the Business and Professions Code
20 is amended to read:

21 8676. The Department of Pesticide Regulation shall receive
22 and account for all moneys collected under this chapter at the end
23 of each month, and shall pay it into the Treasury to the credit of
24 the Structural Pest Control Fund, which is hereby continued in
25 existence.

26 The moneys in this fund shall be expended for the pro rata cost
27 of administration of the Department of Pesticide Regulation and
28 for the purpose of carrying out the provisions of this chapter.

29 SEC. 19. Section 8761 of the Business and Professions Code
30 is amended to read:

31 8761. (a) Any licensed land surveyor or civil engineer
32 authorized to practice land surveying may practice land surveying
33 and prepare maps, plats, reports, descriptions, or other documentary
34 evidence in connection with that practice.

35 (b) All maps, plats, reports, descriptions, or other land surveying
36 documents shall be prepared by, or under the responsible charge
37 of, a licensed land surveyor or civil engineer authorized to practice
38 land surveying and shall include his or her name and license
39 number.

1 (c) Interim maps, plats, reports, descriptions, or other land
2 surveying documents shall include a notation as to the intended
3 purpose of the map, plat, report, description, or other document,
4 such as “preliminary” or “for examination only.”

5 (d) All final maps, plats, reports, descriptions, or other land
6 surveying documents issued by a licensed land surveyor or civil
7 engineer authorized to practice land surveying shall bear the
8 signature and seal or stamp of the licensee and the date of signing
9 and sealing or stamping. If the land surveying document has
10 multiple pages or sheets, the signature, seal or stamp, and date of
11 signing and sealing or stamping shall appear, at a minimum, on
12 the title sheet, cover sheet or page, or signature sheet, unless
13 otherwise required by law.

14 (e) It is unlawful for any person to sign, stamp, seal, or approve
15 any map, plat, report, description, or other land surveying document
16 unless the person is authorized to practice land surveying.

17 (f) It is unlawful for any person to stamp or seal any map, plat,
18 report, description, or other land surveying document with the seal
19 or stamp after the certificate of the licensee that is named on the
20 seal or stamp has expired or has been suspended or revoked, unless
21 the certificate has been renewed or reissued.

22 SEC. 20. Section 9889.20 of the Business and Professions
23 Code is amended to read:

24 9889.20. Except as otherwise provided in Section 9889.21,
25 any person who fails to comply in any respect with the provisions
26 of this chapter is guilty of a misdemeanor and punishable by a fine
27 not exceeding one thousand dollars (\$1,000), or by imprisonment
28 not exceeding six months, or by both that fine and imprisonment.

29 SEC. 21. Section 11344 of the Business and Professions Code
30 is amended to read:

31 11344. (a) Notwithstanding Section 11341, a temporary license
32 may be issued pending the outcome of the fingerprint and
33 background check or as otherwise prescribed by the director. A
34 temporary license is valid for up to 150 days. Unless otherwise
35 prohibited pursuant to Section 17520 of the Family Code, a
36 temporary license may be renewed once at the discretion of the
37 director.

38 (b) The director may issue a probationary license as follows:

39 (1) By term.

1 (2) By conditions to be observed in the exercise of the privileges
2 granted.

3 SEC. 22. Section 19596.2 of the Business and Professions
4 Code is amended to read:

5 19596.2. (a) Notwithstanding any other provision of law and
6 except as provided in Section 19596.4, a thoroughbred racing
7 association or fair may distribute the audiovisual signal and accept
8 wagers on the results of out-of-state thoroughbred races conducted
9 in the United States during the calendar period the association or
10 fair is conducting a race meeting, including days on which there
11 is no live racing being conducted by the association or fair, without
12 the consent of the organization that represents horsemen and
13 horsewomen participating in the race meeting and without regard
14 to the amount of purses. Further, the total number of thoroughbred
15 races imported by associations or fairs on a statewide basis under
16 this section shall not exceed 32 per day on days when live
17 thoroughbred or fair racing is being conducted in the state. The
18 limitation of 32 imported races per day does not apply to any of
19 the following:

20 (1) Races imported for wagering purposes pursuant to
21 subdivision (c).

22 (2) Races imported that are part of the race card of the Kentucky
23 Derby, the Kentucky Oaks, the Preakness Stakes, the Belmont
24 Stakes, the Jockey Club Gold Cup, the Travers Stakes, the
25 Breeders' Cup, the Dubai Cup, or the Haskell Invitational.

26 (3) Races imported into the northern zone when there is no live
27 thoroughbred or fair racing being conducted in the northern zone.

28 (4) Races imported into the combined central and southern zones
29 when there is no live thoroughbred or fair racing being conducted
30 in the combined central and southern zones.

31 (b) A thoroughbred association or fair accepting wagers pursuant
32 to subdivision (a) shall conduct the wagering in accordance with
33 the applicable provisions of Sections 19601, 19616, 19616.1, and
34 19616.2.

35 (c) No thoroughbred association or fair may accept wagers
36 pursuant to this section on out-of-state races commencing after 7
37 p.m., Pacific standard time, without the consent of the harness or
38 quarter horse racing association that is then conducting a live racing
39 meeting in Orange or Sacramento County.

1 SEC. 23. Section 19605.10 of the Business and Professions
2 Code is amended and renumbered to read:

3 19605.79. (a) Notwithstanding any other provision of law, in
4 the event there are at any time uncommitted surplus funds in
5 accounts created pursuant to Sections 19605.73 and 19605.75,
6 those unexpended funds may, at the written request of the
7 organization governing those funds and with the approval of the
8 board, be reallocated to any other fund or account created pursuant
9 to this chapter.

10 (b) Requests to the board to reallocate funds pursuant to
11 subdivision (a) shall be accompanied by a report detailing all
12 receipts and expenditures over the two prior fiscal years of the
13 funds affected by the request.

14 (c) Initial board approval of a request to reallocate funds
15 pursuant to subdivision (a) shall be limited to a one-year period.
16 Approval of a reallocation may be extended beyond one year upon
17 a determination by the board that the extension is in the economic
18 interest of thoroughbred racing.

19 (d) The organization whose written request pursuant to
20 subdivision (a) has been approved by the board shall provide
21 subsequent quarterly reports of receipts and expenditures of the
22 affected funds if requested by the board.

23 (e) The organization whose written request pursuant to
24 subdivision (a) has been approved by the board shall file a report
25 with the board and the respective fiscal committees and committees
26 on governmental organization of the Senate and the Assembly
27 accounting for all receipts and expenditures in any of the affected
28 funds. This report shall be filed within one year of initial board
29 approval and annually thereafter if the approval is extended by the
30 board.

31 SEC. 24. Section 19850.6 of the Business and Professions
32 Code is amended to read:

33 19850.6. (a) In order to avoid delays in implementing the
34 California Remote Caller Bingo Act, including implementing
35 remote caller bingo, testing and certifying card-minding devices,
36 and to avoid disruption of fundraising efforts by nonprofit
37 organizations, the Legislature finds and declares that it is necessary
38 to provide the commission with a limited exemption from normal
39 rulemaking procedural requirements. The commission is directed
40 to adopt appropriate emergency regulations as soon as possible,

1 the initial regulatory action to be filed with the Office of
2 Administrative Law no later than May 1, 2009. It is the intent of
3 the Legislature to provide the commission with full authority and
4 sufficient flexibility to adopt all needed regulations. These
5 regulations may be adopted in a series of regulatory actions.
6 Subsequent regulatory actions may amend or repeal earlier
7 regulatory actions, as necessary, to reflect program experience and
8 concerns of the regulated public.

9 (b) The commission shall adopt emergency regulations
10 concerning remote caller bingo and concerning card-minding
11 devices no later than May 1, 2009. The adoption, amendment,
12 repeal, or readoption of a regulation authorized by this section is
13 deemed to address an emergency, for purposes of Sections 11346.1
14 and 11349.6 of the Government Code, and the commission is
15 hereby exempted for this purpose from the requirements of
16 subdivision (b) of Section 11346.1 of the Government Code, but
17 shall otherwise be subject to the review and approval of the Office
18 of Administrative Law.

19 (c) Notwithstanding any other law, all emergency regulations
20 adopted by the commission pursuant to this section before July 1,
21 2009, shall remain in effect until December 31, 2011, except to
22 the extent that the commission exercises its power to adopt, amend,
23 or repeal these regulations in whole or in part.

24 SEC. 25. Section 23356.2 of the Business and Professions
25 Code is amended to read:

26 23356.2. (a) No license or permit shall be required for the
27 manufacture of beer for personal or family use, and not for sale,
28 by a person over 21 years of age. The aggregate amount of beer
29 with respect to any household shall not exceed (1) 200 gallons per
30 calendar year if there are two or more adults in the household or
31 (2) 100 gallons per calendar year if there is only one adult in the
32 household.

33 (b) No license or permit shall be required for the manufacture
34 of wine for personal or family use, and not for sale, by a person
35 over 21 years of age. The aggregate amount of wine with respect
36 to any household shall not exceed (1) 200 gallons per calendar
37 year if there are two or more adults in the household or (2) 100
38 gallons per calendar year if there is only one adult in the household.

39 (c) Any beer manufactured pursuant to this section may be
40 removed from the premises where manufactured for use in

1 competition at organized affairs, exhibitions, or competitions,
2 including homemakers' contests, tastings, or judgments.

3 (d) Any wine made pursuant to this section may be removed
4 from the premises where made for personal or family use, including
5 use at organized affairs, exhibitions, or competitions, such as
6 homemakers' contests, tastings, or judgments. Wine used under this
7 section shall not be sold or offered for sale.

8 (e) Except as provided herein, nothing in this section authorizes
9 any activity in violation of Section 23300, 23355, or 23399.1.

10 SEC. 26. Section 25503.42 of the Business and Professions
11 Code is amended to read:

12 25503.42. (a) Notwithstanding any other provision of this
13 chapter, a beer manufacturer, the holder of a winegrower's license,
14 a California winegrower's agent, a holder of a distilled spirits
15 rectifier's general license, a distilled spirits manufacturer, or a
16 distilled spirits manufacturer's agent may purchase indoor
17 advertising space or time at a fully enclosed venue with box office
18 sales and attendance by the public on a ticketed basis only, with
19 a patronage capacity in excess of 2,000, located in Los Angeles
20 County within the area subject to the Los Angeles Sports and
21 Entertainment District Specific Plan adopted by the City of Los
22 Angeles pursuant to ordinance number 174225, as approved on
23 September 6, 2001, where the owner of the venue is not the on-sale
24 retail licensee. The purchase of the indoor advertising space or
25 time shall be subject to all of the following conditions:

26 (1) The indoor advertising space or time is purchased only at
27 the venue specified in this subdivision.

28 (2) The purchase of indoor advertising space or time shall be
29 conducted pursuant to a written agreement entered into by the beer
30 manufacturer, holder of a winegrower's license, California
31 winegrower's agent, holder of a distilled spirits rectifier's general
32 license, distilled spirits manufacturer, or a distilled spirits
33 manufacturer's agent and the owner of the venue described in this
34 subdivision. A holder of a wholesale license shall not be a party
35 to the written agreement or otherwise have any direct or indirect
36 obligations under the agreement, including an obligation to share
37 in the costs or contribute to the costs of the indoor advertising
38 space or time purchased pursuant to this section.

39 (3) An agreement for the purchase of indoor advertising space
40 or time pursuant to this section shall not be conditioned directly

1 or indirectly, in any way, on the purchase, sale, or distribution of
2 any alcoholic beverage manufactured or distributed by the
3 advertising beer manufacturer, holder of a winegrower's license,
4 California winegrower's agent, holder of a distilled spirits
5 rectifier's general license, distilled spirits manufacturer, or a
6 distilled spirits manufacturer's agent by any on-sale retail licensee.

7 (4) An on-sale licensee operating at a venue described in this
8 subdivision where indoor advertising space or time is purchased
9 shall serve other brands of beer distributed by a competing beer
10 wholesaler in addition to the brands manufactured or marketed by
11 the advertising beer manufacturer, other brands of wine distributed
12 by a competing wine wholesaler in addition to the brands produced
13 or marketed by the advertising winegrower or California
14 winegrower's agent, and other brands of distilled spirits distributed
15 by a competing distilled spirits wholesaler in addition to the brands
16 manufactured or marketed by the advertising distilled spirits
17 manufacturer, the distilled spirits manufacturer's agent, or a holder
18 of a distilled spirits rectifier's general license.

19 (5) No more than 15 percent of the retail licensee's purchases
20 of distilled spirits and wine for sale on its licensed premises shall
21 be manufactured, produced, or distributed by the holder of a
22 winegrower's license, California winegrower's agent, distilled
23 spirits manufacturer, holder of a distilled spirits rectifier's general
24 license, or a distilled spirits manufacturer's agent that has
25 purchased indoor advertising space.

26 (b) A beer manufacturer, holder of a winegrower's license,
27 California winegrower's agent, holder of a distilled spirits
28 rectifier's general license, distilled spirits manufacturer, or a
29 distilled spirits manufacturer's agent who, through coercion or
30 other illegal means, induces, directly or indirectly, a holder of a
31 wholesaler's license to fulfill those contractual obligations entered
32 into pursuant to subdivision (a) shall be guilty of a misdemeanor
33 and shall be punished by imprisonment in a county jail for not
34 more than six months, or by a fine equal to the greater of an amount
35 equal to the entire value of the advertising space or time involved
36 in the contract or ten thousand dollars (\$10,000), or by both that
37 imprisonment and fine. The person shall also be subject to license
38 revocation pursuant to Section 24200.

39 (c) An on-sale retail licensee who, directly or indirectly, solicits
40 or coerces a holder of a wholesaler's license to solicit a beer

1 manufacturer, holder of a winegrower's license, California
2 winegrower's agent, holder of a distilled spirits rectifier's general
3 license, distilled spirits manufacturer, or a distilled spirits
4 manufacturer's agent to purchase indoor advertising time or space
5 pursuant to subdivision (a) shall be guilty of a misdemeanor and
6 shall be punished by imprisonment in a county jail for not more
7 than six months, or by a fine equal to the greater of an amount
8 equal to the entire value of the advertising space or time involved
9 in the contract or ten thousand dollars (\$10,000), or by both that
10 imprisonment and fine. The person shall also be subject to license
11 revocation pursuant to Section 24200.

12 (d) For purposes of this section, "beer manufacturer" includes
13 a holder of a beer manufacturer's license, a holder of an out-of-state
14 beer manufacturer's certificate, or a holder of a beer and wine
15 importer's general license.

16 (e) Nothing in this section shall authorize the purchasing of
17 indoor advertising space or time pursuant to subdivision (a) by
18 any beer manufacturer, holder of a winegrower's license, a
19 California winegrower's agent, a distilled spirits manufacturer,
20 holder of a distilled spirits rectifier's general license, or a distilled
21 spirits manufacturer's agent directly or indirectly from any on-sale
22 licensee.

23 (f) A venue owner that meets the description provided in
24 subdivision (a) and that enters into a written agreement pursuant
25 to this section shall obtain an annual certificate from the
26 department. The director shall prepare, as part of the annual report
27 required by Section 23055 for submission to the Legislature, a
28 listing of the number of certifications made pursuant to this section
29 or the absence of any certifications. Where there have been no
30 certifications made pursuant to this section for two consecutive
31 years, this information shall be included in the report.

32 (g) The Legislature finds that it is necessary and proper to
33 require a separation among manufacturing interests, wholesale
34 interests, and retail interests in the production and distribution of
35 alcoholic beverages in order to prevent suppliers from dominating
36 local markets through vertical integration and to prevent excessive
37 sales of alcoholic beverages produced by overly aggressive
38 marketing techniques. The Legislature further finds that the
39 exception established by this section to the general prohibition
40 against tied interests shall be limited to its express terms so as not

1 to undermine the general prohibition, and intends that this section
2 be construed accordingly.

3 SEC. 27. Section 25658.4 of the Business and Professions
4 Code is amended to read:

5 25658.4. (a) No clerk shall make an off sale of alcoholic
6 beverages unless the clerk executes under penalty of perjury on
7 the first day he or she makes that sale an application and
8 acknowledgment. The application and acknowledgment shall be
9 in a form understandable to the clerk.

10 (1) The department shall specify the form of the application and
11 acknowledgment, which shall include at a minimum a summary
12 of this division pertaining to the following:

13 (A) The prohibitions contained in Sections 25658 and 25658.5
14 pertaining to the sale to, and purchase of, alcoholic beverages by
15 persons under 21 years of age.

16 (B) Bona fide evidence of majority as provided in Section
17 25660.

18 (C) Hours of operation as provided in Article 2 (commencing
19 with Section 25631).

20 (D) The prohibitions contained in subdivision (a) of Section
21 25602 and Section 25602.1 pertaining to sales to an intoxicated
22 person.

23 (E) Sections 23393 and 23394 as they pertain to on-premises
24 consumption of alcoholic beverages in an off-sale premises.

25 (F) The requirements and prohibitions contained in Section
26 25659.5 pertaining to sales of keg beer for consumption off
27 licensed premises.

28 (2) The application and acknowledgment shall also include a
29 statement that the clerk has read and understands the summary, a
30 statement that the clerk has never been convicted of violating this
31 division or, if convicted, an explanation of the circumstances of
32 each conviction, and a statement that the application and
33 acknowledgment is executed under penalty of perjury.

34 (3) The licensee shall keep the executed application and
35 acknowledgment on the premises at all times and available for
36 inspection by the department. A licensee with more than one
37 licensed off-sale premises in the state may comply with this
38 subdivision by maintaining an executed application and
39 acknowledgment at a designated licensed premises, regional office,
40 or headquarters office in the state. An executed application and

1 acknowledgment maintained at the designated locations shall be
2 valid for all licensed off-sale premises owned by the licensee. Any
3 licensee maintaining an application and acknowledgment at a
4 designated site other than the individual licensed off-sale premises
5 shall notify the department in advance and in writing of the site
6 where the application and acknowledgment shall be maintained
7 and available for inspection. A licensee electing to maintain an
8 application and acknowledgments at a designated site other than
9 the licensed premises shall maintain at each licensed premises a
10 notice of where the executed application and acknowledgments
11 are located. Any licensee with more than one licensed off-sale
12 premises who elects to maintain the application and
13 acknowledgments at a designated site other than each licensed
14 premises shall provide the department, upon written demand, a
15 copy of any employee's executed application and acknowledgment
16 within 10 business days. A violation of this subdivision by a
17 licensee constitutes grounds for discipline by the department.

18 (b) The licensee shall post a notice that contains and describes,
19 in concise terms, prohibited sales of alcoholic beverages, a
20 statement that the off-sale seller will refuse to make a sale if the
21 seller reasonably suspects that the Alcoholic Beverage Control
22 Act may be violated, and a statement that a minor who purchases
23 or attempts to purchase alcoholic beverages is subject to suspension
24 or delay in the issuance of his or her driver's license pursuant to
25 Section 13202.5 of the Vehicle Code. The notice shall be posted
26 at an entrance or at a point of sale in the licensed premises or in
27 any other location that is visible to purchasers of alcoholic
28 beverages and to the off-sale seller.

29 (c) A retail licensee shall post a notice that contains and
30 describes, in concise terms, the fines and penalties for any violation
31 of Section 25658, relating to the sale of alcoholic beverages to, or
32 the purchase of alcoholic beverages by, any person under 21 years
33 of age.

34 (d) Nonprofit organizations or licensees may obtain video
35 recordings and other training materials from the department on
36 the Licensee Education on Alcohol and Drugs (LEAD) program.
37 The video recordings and training materials may be updated
38 periodically and may be provided in English and other languages,
39 and when made available by the department, shall be provided at
40 cost.

(e) As used in this section:

(1) “Off-sale seller” means any person holding a retail off-sale license issued by the department and any person employed by that licensee who in the course of that employment sells alcoholic beverages.

(2) “Clerk” means an off-sale seller who is not a licensee.

(f) The department may adopt rules and appropriate fees for licensees that it determines necessary for the administration of this section.

SEC. 28. Section 1185 of the Civil Code is amended to read:

1185. (a) The acknowledgment of an instrument shall not be taken unless the officer taking it has satisfactory evidence that the person making the acknowledgment is the individual who is described in and who executed the instrument.

(b) For purposes of this section “satisfactory evidence” means the absence of information, evidence, or other circumstances that would lead a reasonable person to believe that the person making the acknowledgment is not the individual he or she claims to be and any one of the following:

(1) (A) The oath or affirmation of a credible witness personally known to the officer, whose identity is proven to the officer upon presentation of a document satisfying the requirements of paragraph (3) or (4), that the person making the acknowledgment is personally known to the witness and that each of the following are true:

(i) The person making the acknowledgment is the person named in the document.

(ii) The person making the acknowledgment is personally known to the witness.

(iii) That it is the reasonable belief of the witness that the circumstances of the person making the acknowledgment are such that it would be very difficult or impossible for that person to obtain another form of identification.

(iv) The person making the acknowledgment does not possess any of the identification documents named in paragraphs (3) and (4).

(v) The witness does not have a financial interest in the document being acknowledged and is not named in the document.

(B) A notary public who violates this section by failing to obtain the satisfactory evidence required by subparagraph (A) shall be subject to a civil penalty not exceeding ten thousand dollars

1 (\$10,000). An action to impose this civil penalty may be brought
2 by the Secretary of State in an administrative proceeding or a public
3 prosecutor in superior court, and shall be enforced as a civil
4 judgment. A public prosecutor shall inform the secretary of any
5 civil penalty imposed under this subparagraph.

6 (2) The oath or affirmation under penalty of perjury of two
7 credible witnesses, whose identities are proven to the officer upon
8 the presentation of a document satisfying the requirements of
9 paragraph (3) or (4), that each statement in paragraph (1) is true.

10 (3) Reasonable reliance on the presentation to the officer of any
11 one of the following, if the document is current or has been issued
12 within five years:

13 (A) An identification card or driver's license issued by the
14 Department of Motor Vehicles.

15 (B) A passport issued by the Department of State of the United
16 States.

17 (4) Reasonable reliance on the presentation of any one of the
18 following, provided that a document specified in subparagraphs
19 (A) to (F), inclusive, shall either be current or have been issued
20 within five years and shall contain a photograph and description
21 of the person named on it, shall be signed by the person, shall bear
22 a serial or other identifying number, and, in the event that the
23 document is a passport, shall have been stamped by the United
24 States Citizenship and Immigration Services of the Department of
25 Homeland Security:

26 (A) A passport issued by a foreign government.

27 (B) A driver's license issued by a state other than California or
28 by a Canadian or Mexican public agency authorized to issue
29 driver's licenses.

30 (C) An identification card issued by a state other than California.

31 (D) An identification card issued by any branch of the Armed
32 Forces of the United States.

33 (E) An inmate identification card issued on or after January 1,
34 1988, by the Department of Corrections and Rehabilitation, if the
35 inmate is in custody.

36 (F) An employee identification card issued by an agency or
37 office of the State of California, or by an agency or office of a city,
38 county, or city and county in this state.

1 (G) An inmate identification card issued prior to January 1,
2 1988, by the Department of Corrections and Rehabilitation, if the
3 inmate is in custody.

4 (c) An officer who has taken an acknowledgment pursuant to
5 this section shall be presumed to have operated in accordance with
6 the provisions of law.

7 (d) A party who files an action for damages based on the failure
8 of the officer to establish the proper identity of the person making
9 the acknowledgment shall have the burden of proof in establishing
10 the negligence or misconduct of the officer.

11 (e) A person convicted of perjury under this section shall forfeit
12 any financial interest in the document.

13 SEC. 29. Section 1363.03 of the Civil Code is amended to
14 read:

15 1363.03. (a) An association shall adopt rules, in accordance
16 with the procedures prescribed by Article 4 (commencing with
17 Section 1357.100) of Chapter 2, that do all of the following:

18 (1) Ensure that if any candidate or member advocating a point
19 of view is provided access to association media, newsletters, or
20 Internet Web sites during a campaign, for purposes that are
21 reasonably related to that election, equal access shall be provided
22 to all candidates and members advocating a point of view,
23 including those not endorsed by the board, for purposes that are
24 reasonably related to the election. The association shall not edit
25 or redact any content from these communications, but may include
26 a statement specifying that the candidate or member, and not the
27 association, is responsible for that content.

28 (2) Ensure access to the common area meeting space, if any
29 exists, during a campaign, at no cost, to all candidates, including
30 those who are not incumbents, and to all members advocating a
31 point of view, including those not endorsed by the board, for
32 purposes reasonably related to the election.

33 (3) Specify the qualifications for candidates for the board of
34 directors and any other elected position, and procedures for the
35 nomination of candidates, consistent with the governing documents.
36 A nomination or election procedure shall not be deemed reasonable
37 if it disallows any member of the association from nominating
38 himself or herself for election to the board of directors.

39 (4) Specify the qualifications for voting, the voting power of
40 each membership, the authenticity, validity, and effect of proxies,

1 and the voting period for elections, including the times at which
2 polls will open and close, consistent with the governing documents.

3 (5) Specify a method of selecting one or three independent third
4 parties as inspector or inspectors of elections utilizing one of the
5 following methods:

6 (A) Appointment of the inspector or inspectors by the board.

7 (B) Election of the inspector or inspectors by the members of
8 the association.

9 (C) Any other method for selecting the inspector or inspectors.

10 (6) Allow the inspector or inspectors to appoint and oversee
11 additional persons to verify signatures and to count and tabulate
12 votes as the inspector or inspectors deem appropriate, provided
13 that the persons are independent third parties.

14 (b) Notwithstanding any other law or provision of the governing
15 documents, elections regarding assessments legally requiring a
16 vote, election and removal of members of the association board
17 of directors, amendments to the governing documents, or the grant
18 of exclusive use of common area property pursuant to Section
19 1363.07 shall be held by secret ballot in accordance with the
20 procedures set forth in this section. A quorum shall be required
21 only if so stated in the governing documents of the association or
22 other provisions of law. If a quorum is required by the governing
23 documents, each ballot received by the inspector of elections shall
24 be treated as a member present at a meeting for purposes of
25 establishing a quorum. An association shall allow for cumulative
26 voting using the secret ballot procedures provided in this section,
27 if cumulative voting is provided for in the governing documents.

28 (c) (1) The association shall select an independent third party
29 or parties as an inspector of elections. The number of inspectors
30 of elections shall be one or three.

31 (2) For the purposes of this section, an independent third party
32 includes, but is not limited to, a volunteer poll worker with the
33 county registrar of voters, a licensee of the California Board of
34 Accountancy, or a notary public. An independent third party may
35 be a member of the association, but may not be a member of the
36 board of directors or a candidate for the board of directors or related
37 to a member of the board of directors or a candidate for the board
38 of directors. An independent third party may not be a person,
39 business entity, or subdivision of a business entity who is currently
40 employed or under contract to the association for any compensable

1 services unless expressly authorized by rules of the association
2 adopted pursuant to paragraph (5) of subdivision (a).

3 (3) The inspector or inspectors of elections shall do all of the
4 following:

5 (A) Determine the number of memberships entitled to vote and
6 the voting power of each.

7 (B) Determine the authenticity, validity, and effect of proxies,
8 if any.

9 (C) Receive ballots.

10 (D) Hear and determine all challenges and questions in any way
11 arising out of or in connection with the right to vote.

12 (E) Count and tabulate all votes.

13 (F) Determine when the polls shall close, consistent with the
14 governing documents.

15 (G) Determine the tabulated results of the election.

16 (H) Perform any acts as may be proper to conduct the election
17 with fairness to all members in accordance with this section, the
18 Corporations Code, and all applicable rules of the association
19 regarding the conduct of the election that are not in conflict with
20 this section.

21 (4) An inspector of elections shall perform his or her duties
22 impartially, in good faith, to the best of his or her ability, and as
23 expeditiously as is practical. If there are three inspectors of
24 elections, the decision or act of a majority shall be effective in all
25 respects as the decision or act of all. Any report made by the
26 inspector or inspectors of elections is prima facie evidence of the
27 facts stated in the report.

28 (d) (1) For purposes of this section, the following definitions
29 shall apply:

30 (A) "Proxy" means a written authorization signed by a member
31 or the authorized representative of the member that gives another
32 member or members the power to vote on behalf of that member.

33 (B) "Signed" means the placing of the member's name on the
34 proxy (whether by manual signature, typewriting, telegraphic
35 transmission, or otherwise) by the member or authorized
36 representative of the member.

37 (2) Proxies shall not be construed or used in lieu of a ballot. An
38 association may use proxies if permitted or required by the bylaws
39 of the association and if those proxies meet the requirements of
40 this article, other laws, and the association's governing documents,

1 but the association shall not be required to prepare or distribute
2 proxies pursuant to this section.

3 (3) Any instruction given in a proxy issued for an election that
4 directs the manner in which the proxyholder is to cast the vote
5 shall be set forth on a separate page of the proxy that can be
6 detached and given to the proxyholder to retain. The proxyholder
7 shall cast the member's vote by secret ballot. The proxy may be
8 revoked by the member prior to the receipt of the ballot by the
9 inspector of elections as described in Section 7613 of the
10 Corporations Code.

11 (e) Ballots and two preaddressed envelopes with instructions
12 on how to return ballots shall be mailed by first-class mail or
13 delivered by the association to every member not less than 30 days
14 prior to the deadline for voting. In order to preserve confidentiality,
15 a voter may not be identified by name, address, or lot, parcel, or
16 unit number on the ballot. The association shall use as a model
17 those procedures used by California counties for ensuring
18 confidentiality of vote by mail ballots, including all of the
19 following:

20 (1) The ballot itself is not signed by the voter, but is inserted
21 into an envelope that is sealed. This envelope is inserted into a
22 second envelope that is sealed. In the upper left-hand corner of the
23 second envelope, the voter shall sign his or her name, indicate his
24 or her name, and indicate the address or separate interest identifier
25 that entitles him or her to vote.

26 (2) The second envelope is addressed to the inspector or
27 inspectors of elections, who will be tallying the votes. The envelope
28 may be mailed or delivered by hand to a location specified by the
29 inspector or inspectors of elections. The member may request a
30 receipt for delivery.

31 (f) All votes shall be counted and tabulated by the inspector or
32 inspectors of elections or his or her designee in public at a properly
33 noticed open meeting of the board of directors or members. Any
34 candidate or other member of the association may witness the
35 counting and tabulation of the votes. No person, including a
36 member of the association or an employee of the management
37 company, shall open or otherwise review any ballot prior to the
38 time and place at which the ballots are counted and tabulated. The
39 inspector of elections, or his or her designee, may verify the
40 member's information and signature on the outer envelope prior

1 to the meeting at which ballots are tabulated. Once a secret ballot
2 is received by the inspector of elections, it shall be irrevocable.

3 (g) The tabulated results of the election shall be promptly
4 reported to the board of directors of the association and shall be
5 recorded in the minutes of the next meeting of the board of
6 directors and shall be available for review by members of the
7 association. Within 15 days of the election, the board shall
8 publicize the tabulated results of the election in a communication
9 directed to all members.

10 (h) The sealed ballots at all times shall be in the custody of the
11 inspector or inspectors of elections or at a location designated by
12 the inspector or inspectors until after the tabulation of the vote,
13 and until the time allowed by Section 7527 of the Corporations
14 Code for challenging the election has expired, at which time
15 custody shall be transferred to the association. If there is a recount
16 or other challenge to the election process, the inspector or
17 inspectors of elections shall, upon written request, make the ballots
18 available for inspection and review by an association member or
19 his or her authorized representative. Any recount shall be conducted
20 in a manner that preserves the confidentiality of the vote.

21 (i) After the transfer of the ballots to the association, the ballots
22 shall be stored by the association in a secure place for no less than
23 one year after the date of the election.

24 (j) Notwithstanding any other provision of law, the rules adopted
25 pursuant to this section may provide for the nomination of
26 candidates from the floor of membership meetings or nomination
27 by any other manner. Those rules may permit write-in candidates
28 for ballots.

29 (k) Except for the meeting to count the votes required in
30 subdivision (f), an election may be conducted entirely by mail
31 unless otherwise specified in the governing documents.

32 (l) The provisions of this section apply to both incorporated and
33 unincorporated associations, notwithstanding any contrary
34 provision of the governing documents.

35 (m) The procedures set forth in this section shall apply to votes
36 cast directly by the membership, but do not apply to votes cast by
37 delegates or other elected representatives.

38 (n) In the event of a conflict between this section and the
39 provisions of the Nonprofit Mutual Benefit Corporation Law (Part
40 3 (commencing with Section 7110) of Division 2 of Title 1 of the

1 Corporations Code) relating to elections, the provisions of this
2 section shall prevail.

3 (o) The amendments made to this section by the act adding this
4 subdivision shall become operative on July 1, 2006.

5 SEC. 30. Section 2954 of the Civil Code is amended to read:

6 2954. (a) (1) No impound, trust, or other type of account for
7 payment of taxes on the property, insurance premiums, or other
8 purposes relating to the property shall be required as a condition
9 of a real property sale contract or a loan secured by a deed of trust
10 or mortgage on real property containing only a single-family,
11 owner-occupied dwelling, except: (A) where required by a state
12 or federal regulatory authority, (B) where a loan is made,
13 guaranteed, or insured by a state or federal governmental lending
14 or insuring agency, (C) upon a failure of the purchaser or borrower
15 to pay two consecutive tax installments on the property prior to
16 the delinquency date for such payments, (D) where the original
17 principal amount of such a loan is (i) 90 percent or more of the
18 sale price, if the property involved is sold, or is (ii) 90 percent or
19 more of the appraised value of the property securing the loan, (E)
20 whenever the combined principal amount of all loans secured by
21 the real property exceeds 80 percent of the appraised value of the
22 property securing the loans, (F) where a loan is made in compliance
23 with the requirements for higher priced mortgage loans established
24 in Regulation Z, whether or not the loan is a higher priced mortgage
25 loan, or (G) where a loan is refinanced or modified in connection
26 with a lender's homeownership preservation program or a lender's
27 participation in such a program sponsored by a federal, state, or
28 local government authority or a nonprofit organization. Nothing
29 contained in this section shall preclude establishment of such an
30 account on terms mutually agreeable to the parties to the loan, if,
31 prior to the execution of the loan or sale agreement, the seller or
32 lender has furnished to the purchaser or borrower a statement in
33 writing, which may be set forth in the loan application, to the effect
34 that the establishment of such an account shall not be required as
35 a condition to the execution of the loan or sale agreement, and
36 further, stating whether or not interest will be paid on the funds in
37 such an account.

38 An impound, trust, or other type of account for the payment of
39 taxes, insurance premiums, or other purposes relating to property
40 established in violation of this subdivision is voidable, at the option

1 of the purchaser or borrower, at any time, but shall not otherwise
2 affect the validity of the loan or sale.

3 (2) For the purposes of this subdivision, “Regulation Z” means
4 any rule, regulation, or interpretation promulgated by the Board
5 of Governors of the Federal Reserve System and any interpretation
6 or approval issued by an official or employee duly authorized by
7 the board to issue interpretations or approvals dealing with,
8 respectively, consumer leasing or consumer lending, pursuant to
9 the federal Truth in Lending Act, as amended (15 U.S.C. Sec. 1601
10 et seq.).

11 (b) Every mortgagee of real property, beneficiary under a deed
12 of trust on real property, or vendor on a real property sale contract
13 upon the written request of the mortgagor, trustor, or vendee shall
14 furnish to the mortgagor, trustor, or vendee for each calendar year
15 within 60 days after the end of the year an itemized accounting of
16 moneys received for interest and principal repayment and received
17 and held in or disbursed from an impound or trust account, if any,
18 for payment of taxes on the property, insurance premiums, or other
19 purposes relating to the property subject to the mortgage, deed of
20 trust, or real property sale contract. The mortgagor, trustor, or
21 vendee shall be entitled to receive one such accounting for each
22 calendar year without charge and shall be entitled to additional
23 similar accountings for one or more months upon written request
24 and on payment in advance of fees as follows:

25 (1) Fifty cents (\$0.50) per statement when requested in advance
26 on a monthly basis for one or more years.

27 (2) One dollar (\$1) per statement when requested for only one
28 month.

29 (3) Five dollars (\$5) if requested for a single cumulative
30 statement giving all the information described above back to the
31 last statement rendered.

32 If the mortgagee, beneficiary, or vendor transmits to the
33 mortgagor, trustor, or vendee a monthly statement or passbook
34 showing moneys received for interest and principal repayment and
35 received and held in and disbursed from an impound or trust
36 account, if any, the mortgagee, beneficiary, or vendor shall be
37 deemed to have complied with this section.

38 No increase in the monthly rate of payment of a mortgagor,
39 trustor, or vendee on a real property sale contract for impound or
40 trust accounts shall be effective until after the mortgagee,

1 beneficiary, or vendor has furnished the mortgagor, trustor, or
2 vendee with an itemized accounting of the moneys presently held
3 by it in the accounts, and a statement of the new monthly rate of
4 payment, and an explanation of the factors necessitating the
5 increase.

6 The provisions of this section shall be in addition to the
7 obligations of the parties as stated by Section 2943.

8 Every person who willfully or repeatedly violates this subdivision
9 shall be subject to punishment by a fine of not less than fifty dollars
10 (\$50) nor more than two hundred dollars (\$200).

11 (c) As used in this section, “single-family, owner-occupied
12 dwelling” means a dwelling that will be owned and occupied by
13 a signatory to the mortgage or deed of trust secured by that
14 dwelling within 90 days of the execution of the mortgage or deed
15 of trust.

16 SEC. 31. Section 128.6 of the Code of Civil Procedure is
17 repealed.

18 SEC. 32. Section 209 of the Code of Civil Procedure, as
19 amended by Section 6 of Chapter 567 of the Statutes of 2006, is
20 repealed.

21 SEC. 33. Section 234 of the Code of Civil Procedure is
22 amended to read:

23 234. Whenever, in the opinion of a judge of a superior court
24 about to try a civil or criminal action or proceeding, the trial is
25 likely to be a protracted one, or upon stipulation of the parties, the
26 court may cause an entry to that effect to be made in the minutes
27 of the court and thereupon, immediately after the jury is impaneled
28 and sworn, the court may direct the calling of one or more
29 additional jurors, in its discretion, to be known as “alternate jurors.”

30 These alternate jurors shall be drawn from the same source, and
31 in the same manner, and have the same qualifications, as the jurors
32 already sworn, and shall be subject to the same examination and
33 challenges. However, each side, or each defendant, as provided in
34 Section 231, shall be entitled to as many peremptory challenges
35 to the alternate jurors as there are alternate jurors called.

36 The alternate jurors shall be seated so as to have equal power
37 and facilities for seeing and hearing the proceedings in the case,
38 and shall take the same oath as the jurors already selected, and
39 shall, unless excused by the court, attend at all times upon the trial
40 of the cause in company with the other jurors, but shall not

1 participate in deliberation unless ordered by the court, and for a
2 failure to do so are liable to be punished for contempt.

3 They shall obey the orders of and be bound by the admonition
4 of the court, upon each adjournment of the court; but if the regular
5 jurors are ordered to be kept in the custody of the sheriff or marshal
6 during the trial of the cause, the alternate jurors shall also be kept
7 in confinement with the other jurors; and upon final submission
8 of the case to the jury, the alternate jurors shall be kept in the
9 custody of the sheriff or marshal who shall not suffer any
10 communication to be made to them except by order of the court,
11 and shall not be discharged until the original jurors are discharged,
12 except as provided in this section.

13 If at any time, whether before or after the final submission of
14 the case to the jury, a juror dies or becomes ill, or upon other good
15 cause shown to the court is found to be unable to perform his or
16 her duty, or if a juror requests a discharge and good cause appears
17 therefor, the court may order the juror to be discharged and draw
18 the name of an alternate, who shall then take his or her place in
19 the jury box, and be subject to the same rules and regulations as
20 though he or she had been selected as one of the original jurors.

21 All laws relative to fees, expenses, and mileage or transportation
22 of jurors shall be applicable to alternate jurors, except that in civil
23 cases the sums for fees and mileage or transportation need not be
24 deposited until the judge directs alternate jurors to be impaneled.

25 SEC. 33.5. Section 349 of the Code of Civil Procedure is
26 repealed.

27 SEC. 34. Section 425.16 of the Code of Civil Procedure is
28 amended to read:

29 425.16. (a) The Legislature finds and declares that there has
30 been a disturbing increase in lawsuits brought primarily to chill
31 the valid exercise of the constitutional rights of freedom of speech
32 and petition for the redress of grievances. The Legislature finds
33 and declares that it is in the public interest to encourage continued
34 participation in matters of public significance, and that this
35 participation should not be chilled through abuse of the judicial
36 process. To this end, this section shall be construed broadly.

37 (b) (1) A cause of action against a person arising from any act
38 of that person in furtherance of the person's right of petition or
39 free speech under the United States Constitution or the California
40 Constitution in connection with a public issue shall be subject to

1 a special motion to strike, unless the court determines that the
2 plaintiff has established that there is a probability that the plaintiff
3 will prevail on the claim.

4 (2) In making its determination, the court shall consider the
5 pleadings, and supporting and opposing affidavits stating the facts
6 upon which the liability or defense is based.

7 (3) If the court determines that the plaintiff has established a
8 probability that he or she will prevail on the claim, neither that
9 determination nor the fact of that determination shall be admissible
10 in evidence at any later stage of the case, or in any subsequent
11 action, and no burden of proof or degree of proof otherwise
12 applicable shall be affected by that determination in any later stage
13 of the case or in any subsequent proceeding.

14 (c) (1) Except as provided in paragraph (2), in any action subject
15 to subdivision (b), a prevailing defendant on a special motion to
16 strike shall be entitled to recover his or her attorney's fees and
17 costs. If the court finds that a special motion to strike is frivolous
18 or is solely intended to cause unnecessary delay, the court shall
19 award costs and reasonable attorney's fees to a plaintiff prevailing
20 on the motion, pursuant to Section 128.5.

21 (2) A defendant who prevails on a special motion to strike in
22 an action subject to paragraph (1) shall not be entitled to attorney's
23 fees and costs if that cause of action is brought pursuant to Section
24 6259, 11130, 11130.3, 54960, or 54960.1 of the Government Code.
25 Nothing in this paragraph shall be construed to prevent a prevailing
26 defendant from recovering attorney's fees and costs pursuant to
27 subdivision (d) of Section 6259, 11130.5, or 54690.5.

28 (d) This section shall not apply to any enforcement action
29 brought in the name of the people of the State of California by the
30 Attorney General, district attorney, or city attorney, acting as a
31 public prosecutor.

32 (e) As used in this section, "act in furtherance of a person's right
33 of petition or free speech under the United States or California
34 Constitution in connection with a public issue" includes: (1) any
35 written or oral statement or writing made before a legislative,
36 executive, or judicial proceeding, or any other official proceeding
37 authorized by law, (2) any written or oral statement or writing
38 made in connection with an issue under consideration or review
39 by a legislative, executive, or judicial body, or any other official
40 proceeding authorized by law, (3) any written or oral statement or

1 writing made in a place open to the public or a public forum in
2 connection with an issue of public interest, or (4) any other conduct
3 in furtherance of the exercise of the constitutional right of petition
4 or the constitutional right of free speech in connection with a public
5 issue or an issue of public interest.

6 (f) The special motion may be filed within 60 days of the service
7 of the complaint or, in the court's discretion, at any later time upon
8 terms it deems proper. The motion shall be scheduled by the clerk
9 of the court for a hearing not more than 30 days after the service
10 of the motion unless the docket conditions of the court require a
11 later hearing.

12 (g) All discovery proceedings in the action shall be stayed upon
13 the filing of a notice of motion made pursuant to this section. The
14 stay of discovery shall remain in effect until notice of entry of the
15 order ruling on the motion. The court, on noticed motion and for
16 good cause shown, may order that specified discovery be conducted
17 notwithstanding this subdivision.

18 (h) For purposes of this section, "complaint" includes
19 "cross-complaint" and "petition," "plaintiff" includes
20 "cross-complainant" and "petitioner," and "defendant" includes
21 "cross-defendant" and "respondent."

22 (i) An order granting or denying a special motion to strike shall
23 be appealable under Section 904.1.

24 (j) (1) Any party who files a special motion to strike pursuant
25 to this section, and any party who files an opposition to a special
26 motion to strike, shall, promptly upon so filing, transmit to the
27 Judicial Council, by e-mail or facsimile, a copy of the endorsed,
28 filed caption page of the motion or opposition, a copy of any related
29 notice of appeal or petition for a writ, and a conformed copy of
30 any order issued pursuant to this section, including any order
31 granting or denying a special motion to strike, discovery, or fees.

32 (2) The Judicial Council shall maintain a public record of
33 information transmitted pursuant to this subdivision for at least
34 three years, and may store the information on microfilm or other
35 appropriate electronic media.

36 SEC. 35. Section 8971 of the Education Code is amended to
37 read:

38 8971. As used in this chapter, the following terms shall have
39 the following meanings:

1 (a) “Child development program” means a full-day or part-day
2 comprehensive developmental program for children ages 0 to 14
3 years that is administered by the State Department of Education.

4 (b) “Early primary program” means an integrated, experiential,
5 and developmentally appropriate educational program for children
6 in preschool, kindergarten, and grades 1 to 3, inclusive, that
7 incorporates various instructional strategies and authentic
8 assessment practices, including educationally appropriate curricula,
9 heterogeneous groupings, active learning activities, oral language
10 development, small group instruction, peer interaction, use of
11 concrete manipulative materials in the classroom, planned
12 articulation among preschool, kindergarten, and primary grades,
13 and parent involvement and education.

14 (c) “Integrated, experiential, and developmentally appropriate
15 educational program” means a program that is designed around
16 the abilities and interests of the children in the program and one
17 in which children learn about the various subjects simultaneously,
18 as opposed to segmented courses, and through “hands-on” or
19 “active learning” teaching methods that are more appropriate for
20 young children than the academic “textbook” approach.

21 (d) “Preschool program” means a comprehensive developmental
22 program for children who are too young to enroll in kindergarten.

23 (e) “Portfolio material” means a selection of representative
24 samples of the child’s performance within the program setting that
25 may include, but not be limited to, teacher observations, work
26 samples, developmental profiles, photographs, and audio or video
27 recordings that present a picture of the child’s progress over time.

28 (f) “School district” includes county offices of education.

29 (g) “State preschool program” means a part-day comprehensive
30 developmental program for children three to five years of age from
31 low-income families, administered by the State Department of
32 Education.

33 SEC. 36. Section 14035 of the Education Code is amended to
34 read:

35 14035. (a) The county school service fund contingency account
36 is hereby established in the General Fund. In each fiscal year the
37 amount credited to the account shall be one hundred thousand
38 dollars (\$100,000). Notwithstanding any provision of Section
39 14002 to the contrary, the amount to be credited to the county
40 school service fund contingency account each fiscal year shall not

1 be transferred from the General Fund as required or authorized to
2 be transferred by Section 14002, but the amounts required or
3 authorized to be transferred by Section 14002 shall be reduced by
4 the amount to be credited to the contingency account and shall
5 remain in the General Fund to the credit of the contingency
6 account.

7 (b) The moneys in the General Fund to the credit of the
8 contingency account shall be transferred by the Controller to the
9 State School Fund in amounts as are certified from time to time
10 by the Superintendent of Public Instruction to be necessary to meet
11 actual costs to reimburse county superintendents of schools for
12 expenses incurred in providing emergency education to pupils and
13 making financial grants to school districts pursuant to Section
14 1602, to reimburse county superintendents of schools for the actual
15 and necessary travel expenses incurred in connection with
16 cooperative county publication projects by the county
17 superintendent of schools or members of his or her staff, and to
18 reimburse county superintendents of schools for expenses incurred
19 in making emergency financial grants to school districts.

20 (c) The amount credited, pursuant to this section, in each fiscal
21 year to the county school service fund contingency account in the
22 General Fund shall be reduced by the amount of the balance
23 remaining to the account on June 30 of the preceding fiscal year
24 and an equal reduction shall be made in the amount of the reduction
25 in the amounts required or authorized to be transferred under
26 Section 14002 in accordance with this section.

27 SEC. 37. Section 33128.3 of the Education Code is amended
28 to read:

29 33128.3. (a) Notwithstanding the standards and criteria adopted
30 pursuant to paragraph (3) of subdivision (a) of Section 33128, for
31 the 2009–10 fiscal year, the minimum state requirement for a
32 reserve for economic uncertainties is one-third of the percentage
33 for a reserve adopted by the state board pursuant to Section 33128
34 as of May 1, 2009.

35 (b) The school district shall make progress, in the 2010–11 fiscal
36 year, toward returning to compliance with the standards and criteria
37 adopted pursuant to paragraph (3) of subdivision (a) of Section
38 33128.

39 (c) For the 2011–12 fiscal year, the minimum state requirement
40 for a reserve for economic uncertainties shall be restored to the

percentage adopted by the state board pursuant to Section 33128 as of May 1, 2009.

(d) This section shall become inoperative on July 1, 2012, and, as of January 1, 2013, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2013, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 38. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for a fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1995–96 fiscal year, the equalization adjustment specified in Section 42238.4.

(3) For the 1996–97 fiscal year, the equalization adjustments specified in Sections 42238.41, 42238.42, and 42238.43.

(4) For the 1985–86 fiscal year, the amount per unit of average daily attendance received in the 1984–85 fiscal year pursuant to Section 42238.7.

(5) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(6) For the 2004–05 fiscal year, the equalization adjustment specified in Section 42238.44.

(7) For the 2006–07 fiscal year, the equalization adjustment specified in Section 42238.48.

(8) For the 2011–12 fiscal year, the equalization adjustment specified in Section 42238.49.

(c) (1) (A) For the 2010–11 fiscal year, the Superintendent shall compute an add-on for each school district by adding the inflation adjustment specified in Section 42238.1 to the adjustment specified in Section 42238.485.

(B) For the 2011–12 fiscal year and each fiscal year thereafter, the Superintendent shall compute an add-on for each school district by adding the inflation adjustment specified in Section 42238.1 to

1 the amount computed pursuant to this paragraph for the prior fiscal
2 year.

3 (2) Commencing with the 2010–11 fiscal year, the
4 Superintendent shall compute an add-on for each school district
5 by dividing each school district’s fiscal year average daily
6 attendance computed pursuant to Section 42238.5 by the total
7 adjustments in funding for each district made for the 2007–08
8 fiscal year pursuant to Section 42238.22 as it read on January 1,
9 2009.

10 (d) The sum of the base revenue limit computed pursuant to
11 subdivision (b) and the add-on computed pursuant to subdivision
12 (c) shall be multiplied by the district average daily attendance
13 computed pursuant to Section 42238.5.

14 (e) For districts electing to compute units of average daily
15 attendance pursuant to paragraph (2) of subdivision (a) of Section
16 42238.5, the amount computed pursuant to Article 4 (commencing
17 with Section 42280) shall be added to the amount computed in
18 subdivision (c) or (d), as appropriate.

19 (f) For the 1984–85 fiscal year only, the county superintendent
20 shall reduce the total revenue limit computed in this section by the
21 amount of the decreased employer contributions to the Public
22 Employees’ Retirement System resulting from enactment of
23 Chapter 330 of the Statutes of 1982, offset by any increase in those
24 contributions, as of the 1983–84 fiscal year, resulting from
25 subsequent changes in employer contribution rates.

26 (g) The reduction required by subdivision (f) shall be calculated
27 as follows:

28 (1) Determine the amount of employer contributions that would
29 have been made in the 1983–84 fiscal year if the applicable Public
30 Employees’ Retirement System employer contribution rate in effect
31 immediately prior to the enactment of Chapter 330 of the Statutes
32 of 1982 was in effect during the 1983–84 fiscal year.

33 (2) Subtract from the amount determined in paragraph (1) the
34 greater of subparagraph (A) or (B):

35 (A) The amount of employer contributions that would have been
36 made in the 1983–84 fiscal year if the applicable Public
37 Employees’ Retirement System employer contribution rate in effect
38 immediately after the enactment of Chapter 330 of the Statutes of
39 1982 was in effect during the 1983–84 fiscal year.

1 (B) The actual amount of employer contributions made to the
2 Public Employees' Retirement System in the 1983–84 fiscal year.

3 (3) For purposes of this subdivision, employer contributions to
4 the Public Employees' Retirement System for either of the
5 following shall be excluded from the calculation specified above:

6 (A) Positions supported totally by federal funds that were subject
7 to supplanting restrictions.

8 (B) Positions supported, to the extent of employer contributions
9 not exceeding twenty-five thousand dollars (\$25,000) by a single
10 educational agency, from a revenue source determined on the basis
11 of equity to be properly excludable from the provisions of this
12 subdivision by the Superintendent with the approval of the Director
13 of Finance.

14 (4) For accounting purposes, the reduction made by this
15 subdivision may be reflected as an expenditure from appropriate
16 sources of revenue as directed by the Superintendent.

17 (h) The Superintendent shall apportion to each school district
18 the amount determined in this section less the sum of:

19 (1) The district's property tax revenue received pursuant to
20 Chapter 3.5 (commencing with Section 75) and Chapter 6
21 (commencing with Section 95) of Part 0.5 of Division 1 of the
22 Revenue and Taxation Code.

23 (2) The amount, if any, received pursuant to Part 18.5
24 (commencing with Section 38101) of Division 2 of the Revenue
25 and Taxation Code.

26 (3) The amount, if any, received pursuant to Chapter 3
27 (commencing with Section 16140) of Part 1 of Division 4 of Title
28 2 of the Government Code.

29 (4) Prior years' taxes and taxes on the unsecured roll.

30 (5) Fifty percent of the amount received pursuant to Section
31 41603.

32 (6) The amount, if any, received pursuant to the Community
33 Redevelopment Law (Part 1 (commencing with Section 33000)
34 of Division 24 of the Health and Safety Code), except for any
35 amount received pursuant to Section 33401 or 33676 of the Health
36 and Safety Code that is used for land acquisition, facility
37 construction, reconstruction, or remodeling, or deferred
38 maintenance, except for any amount received pursuant to Section
39 33492.15 of, paragraph (4) of subdivision (a) of Section 33607.5

1 of, or Section 33607.7 of, the Health and Safety Code that is
2 allocated exclusively for educational facilities.

3 (7) For a unified school district, other than a unified school
4 district that has converted all of its schools to charter status
5 pursuant to Section 47606, the amount of statewide average
6 general-purpose funding per unit of average daily attendance
7 received by school districts for each of four grade level ranges, as
8 computed by the department pursuant to Section 47633, multiplied
9 by the average daily attendance, in corresponding grade level
10 ranges, of any pupils who attend charter schools funded pursuant
11 to Chapter 6 (commencing with Section 47630) of Part 26.8 of
12 Division 4 for which the district is the sponsoring local educational
13 agency, as defined in Section 47632, and who reside in and would
14 otherwise have been eligible to attend a noncharter school of the
15 district.

16 (i) A transfer of pupils of grades 7 and 8 between an elementary
17 school district and a high school district shall not result in the
18 receiving district receiving a revenue limit apportionment for those
19 pupils that exceeds 105 percent of the statewide average revenue
20 limit for the type and size of the receiving school district.

21 SEC. 39. Section 42605 of the Education Code is amended to
22 read:

23 42605. (a) (1) Unless otherwise prohibited under federal law
24 or otherwise specified in subdivision (e), for the 2008–09 fiscal
25 year to the 2012–13 fiscal year, inclusive, recipients of funds from
26 the items listed in paragraph (2) may use funding received, pursuant
27 to subdivision (b), from any of these items listed in paragraph (2)
28 that are contained in an annual Budget Act, for any educational
29 purpose.

30 (2) Items 6110-104-0001, 6110-105-0001, 6110-108-0001,
31 6110-122-0001, 6110-123-0001, 6110-124-0001, 6110-137-0001,
32 6110-144-0001, 6110-150-0001, 6110-151-0001, 6110-156-0001,
33 6110-181-0001, 6110-188-0001, 6110-189-0001, 6110-190-0001,
34 6110-193-0001, 6110-195-0001, 6110-198-0001, 6110-204-0001,
35 6110-208-0001, 6110-209-0001, 6110-211-0001, 6110-227-0001,
36 6110-228-0001, 6110-232-0001, 6110-240-0001, 6110-242-0001,
37 6110-243-0001, 6110-244-0001, 6110-245-0001, 6110-246-0001,
38 6110-247-0001, 6110-248-0001, 6110-260-0001, 6110-265-0001,
39 6110-266-0001, 6110-267-0001, 6110-268-0001, and
40 6360-101-0001 of Section 2.00.

(b) (1) For the 2009–10 fiscal year to the 2012–13 fiscal year, inclusive, the Superintendent or other administering state agency, as appropriate, shall apportion from the amounts provided in the annual Budget Act for the items enumerated in paragraph (2) of subdivision (a) an amount to recipients based on the same relative proportion that the recipient received in the 2008–09 fiscal year for the programs funded through the items enumerated in paragraph (2) of subdivision (a).

(2) This section and Section 42 of Chapter 12 of the 2009–10 Third Extraordinary Session do not authorize a school district that receives funding on behalf of a charter school pursuant to Sections 47634.1 and 47651 to redirect this funding for another purpose unless otherwise authorized in law or pursuant to an agreement between a charter school and its chartering authority. Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, a school district that receives funding on behalf of a charter school pursuant to Sections 47634.1 and 47651 shall continue to distribute the funds to those charter schools based on the relative proportion that the school district distributed in the 2007–08 fiscal year, and shall adjust those amounts to reflect changes in charter school attendance in the district. The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a). For a charter school that began operation in the 2008–09 fiscal year, if a school district received funding on behalf of that charter school pursuant to Sections 47634.1 and 47651, the school district shall continue to distribute the funds to that charter school based on the relative proportion that the school district distributed in the 2008–09 fiscal year and shall adjust the amount of those funds to reflect changes in charter school attendance in the district. The amounts allocated shall be adjusted for any greater or lesser amount appropriated for the items enumerated in paragraph (2) of subdivision (a).

(3) Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, the Superintendent shall apportion from the amounts appropriated by Item 6110-211-0001 of Section 2.00 of the annual Budget Act an amount to a charter school in accordance with the per-pupil methodology prescribed in subdivision (c) of Section 47634.1.

(4) Notwithstanding paragraph (1), for the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, the Superintendent shall apportion from the amounts provided in the annual Budget Act an amount to a school district, charter school, and county office of education based on the same relative proportion that the local educational agency received in the 2007–08 fiscal year for the programs funded through the following items contained in the annual Budget Act: 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-190-0001, Schedule (3) of 6110-193-0001, 6110-198-0001, 6110-232-0001, and Schedule (2) of 6110-240-0001.

(5) For purposes of paragraph (4), if a direct-funded charter school began operation in the 2008–09 fiscal year, the amount that the charter school was entitled to receive from the items enumerated in paragraph (4) for the 2008–09 fiscal year, as certified by the Superintendent in March 2009, is deemed to have been received in the 2007–08 fiscal year.

(c) (1) This section does not obligate the state to refund or repay reductions made pursuant to this section. A decision by a school district to reduce funding pursuant to this section for a state-mandated local program shall constitute a waiver of the subvention of funds that the school district is otherwise entitled to pursuant to Section 6 of Article XIII B of the California Constitution on the amount so reduced.

(2) As a condition of receipt of funds, the governing board of the school district or board of the county office of education, as appropriate, at a regularly scheduled open public hearing shall take testimony from the public, discuss, approve or disapprove the proposed use of funding, and make explicit for each of the budget items in paragraph (2) of subdivision (a) the purposes for which the funds will be used.

(3) Using the Standardized Account Code Structure reporting process, a local educational agency shall report expenditures of funds pursuant to the authority of this section by using the appropriate function codes to indicate the activities for which these funds are expended. The department shall collect and provide this information to the Department of Finance and the appropriate policy and budget committees of the Legislature by April 15, 2010, and annually thereafter on April 15 until, and including, April 15, 2014.

(d) For the 2008–09 fiscal year to the 2012–13 fiscal year, inclusive, local educational agencies that use the flexibility provision of this section shall be deemed to be in compliance with the program and funding requirements contained in statutory, regulatory, and provisional language, associated with the items enumerated in subdivision (a).

(e) Notwithstanding subdivision (d), the following requirements shall continue to apply:

(1) For Items 6110-105-0001 and 6110-156-0001, the amount authorized for flexibility shall exclude the funding provided for instruction of CalWORKs-eligible students pursuant to Schedules (2) and (3) and Provisions 2 and 4.

(2) (A) Any instructional materials purchased by a local educational agency shall be the materials adopted by the state board for kindergarten and grades 1 to 8, inclusive, and for grades 9 to 12, inclusive, the materials purchased shall be aligned with state standards as defined by Section 60605, and shall also meet the reporting and sufficiency requirements contained in Section 60119.

(B) For purposes of this section, “sufficiency” means that each pupil has sufficient textbooks and instructional materials in the four core areas as defined by Section 60119 and that all pupils within the local educational agency who are enrolled in the same course shall have identical textbooks and instructional materials, as specified in Section 1240.3.

(3) For Item 6110-195-0001, the item shall exclude moneys that are required to fund awards for teachers that have previously met the requirements necessary to obtain these awards, until the award is paid in full.

(4) For Item 6110-266-0001, a county office of education shall conduct at least one site visit to each of the required schoolsites pursuant to Section 1240 and shall fulfill all of the duties set forth in Sections 1240 and 44258.9.

(5) For Item 6110-198-0001, a school district or county office of education that operates the child care component of the Cal-SAFE program shall comply with paragraphs (5) and (6) of subdivision (c) of Section 54746.

(f) This section does not invalidate any state law pertaining to teacher credentialing requirements or the functions that require credentials.

1 SEC. 40. Section 42606 of the Education Code is amended to
2 read:

3 42606. (a) A local educational agency, including a
4 direct-funded charter school, may apply for any state categorical
5 program funding included in the annual Budget Act on behalf of
6 a school that begins operation in the 2008–09 to the 2012–13 fiscal
7 years, inclusive, but only to the extent the school or local
8 educational agency is eligible for funding and meets the provisions
9 of the program that were in effect as of January 1, 2009, except
10 that charter schools shall not apply for any of the programs
11 contained in Section 47634.4.

12 (b) A local educational agency that establishes a new school by
13 redirecting enrollment from its existing schools to the new school
14 shall not be eligible to receive funding in addition to the amounts
15 allocated pursuant to Section 42605 for the categorical programs
16 specified in that section or for the Class Size Reduction Program
17 pursuant to Sections 52122 and 52124.

18 (c) The Superintendent shall report the number of new schools
19 and the programs that these schools are applying for, including an
20 estimate of the cost for that year. This information shall be reported
21 by November 11, 2009, and each fiscal year thereafter, to the
22 appropriate committees of the Legislature, the Legislative Analyst's
23 Office, and the Department of Finance.

24 SEC. 41. Section 44346.5 of the Education Code is amended
25 to read:

26 44346.5. (a) The Commission on Teacher Credentialing shall
27 submit to the Department of Justice fingerprint images and related
28 information required by the Department of Justice of all
29 individuals, as described in subdivision (a) of Section 49024, for
30 the purposes of obtaining information as to the existence and
31 content of a record of state or federal convictions and state or
32 federal arrests and also information as to the existence and content
33 of a record of state or federal arrests for which the Department of
34 Justice establishes that the individual is free on bail or on his or
35 her own recognizance pending trial or appeal.

36 (b) When received, the Department of Justice shall forward to
37 the Federal Bureau of Investigation requests for federal summary
38 criminal history information received pursuant to this section. The
39 Department of Justice shall review the information returned from

1 the Federal Bureau of Investigation and compile and disseminate
2 a response to the commission.

3 (c) The Department of Justice shall provide a state and federal
4 level response to the commission pursuant to paragraph (1) of
5 subdivision (p) of Section 11105 of the Penal Code.

6 (d) The commission shall request from the Department of Justice
7 subsequent arrest notification service, as provided pursuant to
8 Section 11105.2 of the Penal Code, for individuals described in
9 subdivision (a) of Section 49024 of this code.

10 (e) The Department of Justice shall charge a fee sufficient to
11 cover the cost of processing the request described in this section.

12 (f) (1) If a denial of an application for a certificate is due at
13 least in part to the individual's state or federal criminal history
14 record, the commission shall provide to the individual a copy of
15 his or her criminal history record search response with the notice
16 of the denial.

17 (2) The state or federal criminal history record search response
18 shall not be modified or altered from its form or content as provided
19 by the Department of Justice.

20 (3) The criminal history record search response shall be provided
21 in such a manner as to protect the confidentiality and privacy of
22 the individual's criminal history record and the criminal history
23 record search response shall not be made available by the
24 commission to any school district or county office of education.

25 (4) The commission shall retain a copy of the individual's
26 criminal history record search response, and the date and the
27 address to which it was sent. The commission shall make this
28 information available upon request by the Department of Justice
29 or the Federal Bureau of Investigation.

30 SEC. 42. Section 44856 of the Education Code is amended to
31 read:

32 44856. The governing board of a school district, for the
33 purposes of providing bilingual instruction, foreign language
34 instruction, or cultural enrichment, in the schools of the district,
35 subject to the rules and regulations of the state board, may conclude
36 arrangements with the proper authorities of a foreign country, or
37 of a state, territory, or possession of the United States, for the hiring
38 of bilingual teachers employed in public or private schools of a
39 foreign country, state, territory, or possession. To be eligible for
40 employment, the teacher must speak English fluently. Any persons

1 employed pursuant to this section shall be known as a “sojourn
2 certificated employee.”

3 A person shall not be hired as a sojourn certificated employee
4 by a school district unless he or she holds the necessary valid
5 credential or credentials issued by the Commission on Teacher
6 Credentialing authorizing the person to serve in a position requiring
7 certification qualifications in the school district proposing to
8 employ him or her. The person may be employed for a period not
9 to exceed two years, except that thereafter the period of
10 employment may be extended from year to year for a total period
11 of not more than five years upon verification by the employing
12 district that termination of the employment would adversely affect
13 an existing bilingual or foreign language program or program of
14 cultural enrichment, and that attempts to secure the employment
15 of a certificated California teacher qualified to fill the position
16 have been unsuccessful. The commission shall establish minimum
17 standards for the credentials for sojourn certificated employees.

18 SEC. 43. Section 45103.1 of the Education Code is amended
19 to read:

20 45103.1. (a) Notwithstanding any other provision of this
21 chapter, personal services contracting for all services currently or
22 customarily performed by classified school employees to achieve
23 cost savings is permissible, unless otherwise prohibited, when all
24 the following conditions are met:

25 (1) The governing board or contracting agency clearly
26 demonstrates that the proposed contract will result in actual overall
27 cost savings to the school district, provided that:

28 (A) In comparing costs, there shall be included the school
29 district’s additional cost of providing the same service as proposed
30 by a contractor. These additional costs shall include the salaries
31 and benefits of additional staff that would be needed and the cost
32 of additional space, equipment, and materials needed to perform
33 the function.

34 (B) In comparing costs, there shall not be included the school
35 district’s indirect overhead costs unless these costs can be attributed
36 solely to the function in question and would not exist if that
37 function was not performed by the school district. Indirect overhead
38 costs shall mean the pro rata share of existing administrative
39 salaries and benefits, rent, equipment costs, utilities, and materials.

1 (C) In comparing costs, there shall be included in the cost of a
2 contractor providing a service any continuing school district costs
3 that would be directly associated with the contracted function.
4 These continuing school district costs shall include, but not be
5 limited to, those for inspection, supervision, and monitoring.

6 (2) Proposals to contract out work shall not be approved solely
7 on the basis that savings will result from lower contractor pay rates
8 or benefits. Proposals to contract out work shall be eligible for
9 approval if the contractor's wages are at the industry's level and
10 do not undercut school district pay rates.

11 (3) The contract does not cause the displacement of school
12 district employees. The term "displacement" includes layoff,
13 demotion, involuntary transfer to a new classification, involuntary
14 transfer to a new location requiring a change of residence, and
15 time base reductions. Displacement does not include changes in
16 shifts or days off, nor does it include reassignment to other
17 positions within the same classification and general location or
18 employment with the contractor, so long as wages and benefits
19 are comparable to those paid by the school district.

20 (4) The savings shall be large enough to ensure that they will
21 not be eliminated by private sector and district cost fluctuations
22 that could normally be expected during the contracting period.

23 (5) The amount of savings clearly justify the size and duration
24 of the contracting agreement.

25 (6) The contract is awarded through a publicized, competitive
26 bidding process.

27 (7) The contract includes specific provisions pertaining to the
28 qualifications of the staff that will perform the work under the
29 contract, as well as assurance that the contractor's hiring practices
30 meet applicable nondiscrimination standards.

31 (8) The potential for future economic risk to the school district
32 from potential contractor rate increases is minimal.

33 (9) The contract is with a firm. A "firm" means a corporation,
34 limited liability company, partnership, nonprofit organization, or
35 sole proprietorship.

36 (10) The potential economic advantage of contracting is not
37 outweighed by the public's interest in having a particular function
38 performed directly by the school district.

1 (b) Notwithstanding any other provision of this chapter, personal
2 services contracting shall also be permissible when any of the
3 following conditions can be met:

4 (1) The contract is for new school district functions and the
5 Legislature has specifically mandated or authorized the
6 performance of the work by independent contractors.

7 (2) The services contracted are not available within the district,
8 cannot be performed satisfactorily by school district employees,
9 or are of such a highly specialized or technical nature that the
10 necessary expert knowledge, experience, and ability are not
11 available through the school district.

12 (3) The services are incidental to a contract for the purchase or
13 lease of real or personal property. Contracts under this criterion,
14 known as “service agreements,” shall include, but not be limited
15 to, agreements to service or maintain office equipment or
16 computers that are leased or rented.

17 (4) The policy, administrative, or legal goals and purposes of
18 the district cannot be accomplished through the utilization of
19 persons selected pursuant to the regular or ordinary school district
20 hiring process. Contracts are permissible under this criterion to
21 protect against a conflict of interest or to ensure independent and
22 unbiased findings in cases where there is a clear need for a
23 different, outside perspective. These contracts shall include, but
24 not be limited to, obtaining expert witnesses in litigation.

25 (5) The nature of the work is such that the criteria for emergency
26 appointments apply. “Emergency appointment” means an
27 appointment made for a period not to exceed 60 working days
28 either during an actual emergency to prevent the stoppage of public
29 business or because of the limited duration of the work. The method
30 of selection and the qualification standards for an emergency
31 employee shall be determined by the district. The frequency of
32 appointment, length of employment, and the circumstances
33 appropriate for the appointment of firms or individuals under
34 emergency appointments shall be restricted so as to prevent the
35 use of emergency appointments to circumvent the regular or
36 ordinary hiring process.

37 (6) The contractor will provide equipment, materials, facilities,
38 or support services that could not feasibly be provided by the
39 school district in the location where the services are to be
40 performed.

(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the district's regular or ordinary hiring process would frustrate their very purpose.

(c) This section shall apply to all school districts, including districts that have adopted the merit system.

(d) This section shall apply to personal service contracts entered into after January 1, 2003. This section shall not apply to the renewal of personal services contracts subsequent to January 1, 2003, where the contract was entered into before January 1, 2003, irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.

SEC. 44. Section 49701 of the Education Code is amended to read:

49701. The provisions of the Interstate Compact on Educational Opportunity for Military Children are as follows:

Article I. Purpose

It is the purpose of this compact to remove barriers to educational success imposed on children of military families because of frequent moves and deployment of their parents by:

(A) Facilitating the timely enrollment of children of military families and ensuring that they are not placed at a disadvantage due to difficulty in the transfer of education records from the previous school district(s) or variations in entrance/age requirements.

(B) Facilitating the student placement process through which children of military families are not disadvantaged by variations in attendance requirements, scheduling, sequencing, grading, course content, or assessment.

(C) Facilitating the qualification and eligibility for enrollment, educational programs, and participation in extracurricular academic, athletic, and social activities.

(D) Facilitating the on-time graduation of children of military families.

(E) Providing for the promulgation and enforcement of administrative rules implementing the provisions of this compact.

1 (F) Providing for the uniform collection and sharing of
2 information between and among member states, schools, and
3 military families under this compact.

4 (G) Promoting coordination between this compact and other
5 compacts affecting military children.

6 (H) Promoting flexibility and cooperation between the
7 educational system, parents and the student in order to achieve
8 educational success for the student.

9
10 Article II. Definitions
11

12 As used in this compact, unless the context clearly requires a
13 different construction:

14 (A) “Active duty” means: full-time duty status in the active
15 uniformed service of the United States, including members of the
16 National Guard and Reserve on active duty orders pursuant to 10
17 U.S.C. Sections 1209 and 1211.

18 (B) “Children of military families” means: a school-aged child
19 or children, enrolled in Kindergarten through Twelfth (12th) grade,
20 in the household of an active duty member.

21 (C) “Compact commissioner” means: the voting representative
22 of each compacting state appointed pursuant to Article VIII of this
23 compact.

24 (D) “Deployment” means: the period one (1) month prior to the
25 service members’ departure from their home station on military
26 orders though six (6) months after return to their home station.

27 (E) “Educational records” means: those official records, files,
28 and data directly related to a student and maintained by the school
29 or local education agency, including, but not limited to, records
30 encompassing all the material kept in the student’s cumulative
31 folder such as general identifying data, records of attendance and
32 of academic work completed, records of achievement and results
33 of evaluative tests, health data, disciplinary status, test protocols,
34 and individualized education programs.

35 (F) “Extracurricular activities” means: a voluntary activity
36 sponsored by the school or local education agency or an
37 organization sanctioned by the local education agency.
38 Extracurricular activities include, but are not limited to, preparation
39 for and involvement in public performances, contests, athletic
40 competitions, demonstrations, displays, and club activities.

1 (G) “Interstate Commission on Educational Opportunity for
2 Military Children” means: the commission that is created under
3 Article IX of this compact, which is generally referred to as
4 Interstate Commission.

5 (H) “Local education agency” means: a public authority legally
6 constituted by the state as an administrative agency to provide
7 control of and direction for Kindergarten through Twelfth (12th)
8 grade public educational institutions.

9 (I) “Member state” means: a state that has enacted this compact.

10 (J) “Military installation” means: a base, camp, post, station,
11 yard, center, homeport facility for any ship, or other activity under
12 the jurisdiction of the Department of Defense, including any leased
13 facility, which is located within any of the several states, the
14 District of Columbia, the Commonwealth of Puerto Rico, the U.S.
15 Virgin Islands, Guam, American Samoa, the Northern Marianas
16 Islands, and any other U.S. Territory. Such term does not include
17 any facility used primarily for civil works, rivers and harbors
18 projects, or flood control projects.

19 (K) “Non-member state” means: a state that has not enacted
20 this compact.

21 (L) “Receiving state” means: the state to which a child of a
22 military family is sent, brought, or caused to be sent or brought.

23 (M) “Rule” means: a written statement by the Interstate
24 Commission promulgated pursuant to Article XII of this compact
25 that is of general applicability, implements, interprets, or prescribes
26 a policy or provision of the Compact, or an organizational,
27 procedural, or practice requirement of the Interstate Commission,
28 and has the force and effect of statutory law in a member state,
29 and includes the amendment, repeal, or suspension of an existing
30 rule.

31 (N) “Sending state” means: the state from which a child of a
32 military family is sent, brought, or caused to be sent or brought.

33 (O) “State” means: a state of the United States, the District of
34 Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin
35 Islands, Guam, American Samoa, the Northern Marianas Islands,
36 and any other U.S. Territory.

37 (P) “Student” means: the child of a military family for whom
38 the local education agency receives public funding and who is
39 formally enrolled in Kindergarten through Twelfth (12th) grade.

1 (Q) “Transition” means: 1) the formal and physical process of
2 transferring from school to school or 2) the period of time in which
3 a student moves from one school in the sending state to another
4 school in the receiving state.

5 (R) “Uniformed service(s)” means: the U.S. Army, Navy, Air
6 Force, Marine Corps, or Coast Guard, as well as the Commissioned
7 Corps of the National Oceanic and Atmospheric Administration
8 and the U.S. Public Health Services.

9 (S) “Veteran” means: a person who served in the uniformed
10 services and who was discharged or released therefrom under
11 conditions other than dishonorable.

12
13 Article III. Applicability
14

15 (A) Except as otherwise provided in Section B, this compact
16 shall apply to the children of:

17 (1) Active duty members of the uniformed services as defined
18 in this compact, including members of the National Guard and
19 Military Reserve on active duty orders pursuant to 10 U.S.C.
20 Sections 1209 and 1211;

21 (2) Members or veterans of the uniformed services who are
22 severely injured and medically discharged or retired for a period
23 of one (1) year after medical discharge or retirement; and

24 (3) Members of the uniformed services who die on active duty
25 or as a result of injuries sustained on active duty for a period of
26 one (1) year after death.

27 (B) The provisions of this interstate compact shall only apply
28 to local education agencies as defined in this compact.

29 (C) The provisions of this compact shall not apply to the children
30 of:

31 (1) Inactive members of the National Guard and Military
32 Reserve;

33 (2) Members of the uniformed services now retired, except as
34 provided in Section A;

35 (3) Veterans of the uniformed services, except as provided in
36 Section A; and

37 (4) Other U.S. Dept. of Defense personnel and other federal
38 agency civilian and contract employees not defined as active duty
39 members of the uniformed services.
40

1 Article IV. Educational Records and Enrollment

2
3 (A) Unofficial or “hand-carried” education records – In the
4 event that official education records cannot be released to the
5 parents for the purpose of transfer, the custodian of the records in
6 the sending state shall prepare and furnish to the parent a complete
7 set of unofficial educational records containing uniform
8 information as determined by the Interstate Commission to the
9 extent feasible. Upon receipt of the unofficial education records
10 by a school in the receiving state, the school shall enroll and
11 appropriately place the student based on the information provided
12 in the unofficial records pending validation by the official records,
13 as quickly as possible.

14 (B) Official education records/transcripts – Simultaneous with
15 the enrollment and conditional placement of the student, the school
16 in the receiving state shall request the student’s official education
17 record from the school in the sending state. Upon receipt of this
18 request, the school in the sending state will process and furnish
19 the official education records to the school in the receiving state
20 within ten (10) days or within such time as is reasonably
21 determined under the rules promulgated by the Interstate
22 Commission to the extent practicable in each case.

23 (C) Immunizations – Compacting states shall give thirty (30)
24 days from the date of enrollment or within such time as is
25 reasonably determined under the rules promulgated by the Interstate
26 Commission, for students to obtain any immunization(s) required
27 by the receiving state. For a series of immunizations, initial
28 vaccinations must be obtained within thirty (30) days or within
29 such time as is reasonably determined under the rules promulgated
30 by the Interstate Commission.

31 (D) Kindergarten and First (1st) grade entrance age – Students
32 shall be allowed to continue their enrollment at grade level in the
33 receiving state commensurate with their grade level (including
34 Kindergarten) from a local education agency in the sending state
35 at the time of transition, regardless of age. A student that has
36 satisfactorily completed the prerequisite grade level in the local
37 education agency in the sending state shall be eligible for
38 enrollment in the next highest grade level in the receiving state,
39 regardless of age. A student transferring after the start of the school
40 year in the receiving state shall enter the school in the receiving

1 state on his or her validated level from an accredited school in the
2 sending state.

3
4 Article V. Placement and Attendance
5

6 (A) Course placement – When the student transfers before or
7 during the school year, the receiving state school shall initially
8 honor placement of the student in educational courses based on
9 the student’s enrollment in the sending state school and/or
10 educational assessments conducted at the school in the sending
11 state if the courses are offered and there is space available, as
12 determined by the school district. Course placement includes, but
13 is not limited to, Honors, International Baccalaureate, Advanced
14 Placement, vocational, technical and career pathways courses.
15 Continuing the student’s academic program from the previous
16 school and promoting placement in academically and career
17 challenging courses should be paramount when considering
18 placement. This does not preclude the school in the receiving state
19 from performing subsequent evaluations to ensure appropriate
20 placement and continued enrollment of the student in the course(s).

21 (B) Educational program placement – The receiving state school
22 shall initially honor placement of the student in educational
23 programs based on current educational assessments conducted at
24 the school in the sending state or participation/placement in like
25 programs in the sending state, provided that the program exists in
26 the school and there is space available, as determined by the school
27 district. Such programs include, but are not limited to: 1) gifted
28 and talented programs; and 2) English as a second language (ESL).
29 This does not preclude the school in the receiving state from
30 performing subsequent evaluations to ensure appropriate placement
31 of the student.

32 (C) Special education services – 1) In compliance with the
33 federal requirements of the Individuals with Disabilities Education
34 Act (IDEA), 20 U.S.C.A. Section 1400 et seq., the receiving state
35 shall initially provide comparable services to a student with
36 disabilities based on his/her current Individualized Education
37 Program (IEP); and 2) In compliance with the requirements of
38 Section 504 of the Rehabilitation Act, 29 U.S.C.A. Section 794,
39 and with Title II of the Americans with Disabilities Act, 42
40 U.S.C.A. Sections 12131-12165, the receiving state shall make

1 reasonable accommodations and modifications to address the needs
2 of incoming students with disabilities, subject to an existing Section
3 504 or Title II Plan, to provide the student with equal access to
4 education. This does not preclude the school in the receiving state
5 from performing subsequent evaluations to ensure appropriate
6 placement of the student.

7 (D) Placement flexibility – Local education agency
8 administrative officials shall have flexibility in waiving
9 course/program prerequisites, or other preconditions for placement
10 in courses/programs offered under the jurisdiction of the local
11 education agency.

12 (E) Absence as related to deployment activities – A student
13 whose parent or legal guardian is an active duty member of the
14 uniformed services, as defined by the compact, and has been called
15 to duty for, is on leave from, or immediately returned from
16 deployment to a combat zone or combat support posting, shall be
17 granted additional excused absences at the discretion of the local
18 education agency superintendent to visit with his or her parent or
19 legal guardian relative to such leave or deployment of the parent
20 or guardian.

21 22 Article VI. Eligibility 23

24 (A) Eligibility for enrollment

25 (1) Special power of attorney, relative to the guardianship of a
26 child of a military family and executed under applicable law, shall
27 be sufficient for the purposes of enrollment and all other actions
28 requiring parental participation and consent.

29 (2) A local education agency shall be prohibited from charging
30 local tuition to a transitioning military child placed in the care of
31 a noncustodial parent or other person standing in loco parentis
32 who lives in a jurisdiction other than that of the custodial parent.

33 (3) A transitioning military child, placed in the care of a
34 noncustodial parent or other person standing in loco parentis, who
35 lives in a jurisdiction other than that of the custodial parent, may
36 continue to attend the school in which he/she was enrolled while
37 residing with the custodial parent.

38 (B) Eligibility for extracurricular participation – State and local
39 education agencies shall facilitate the opportunity for transitioning
40 military children's inclusion in extracurricular activities, regardless

1 of application deadlines, to the extent they are otherwise qualified
2 and space is available, as determined by the school district.

3
4 Article VII. Graduation
5

6 In order to facilitate the on-time graduation of children of
7 military families, states and local education agencies shall
8 incorporate the following procedures:

9 (A) Waiver requirements – Local education agency
10 administrative officials shall use best efforts to waive specific
11 courses required for graduation if similar coursework has been
12 satisfactorily completed in another local education agency or shall
13 provide reasonable justification for denial. Should a waiver not be
14 granted to a student who would qualify to graduate from the
15 sending school, the local education agency shall use best efforts
16 to provide an alternative means of acquiring required coursework
17 so that graduation may occur on time.

18 (B) Exit exams – States shall accept: 1) exit or end-of-course
19 exams required for graduation from the sending state; or 2) national
20 norm-referenced achievement tests; or 3) alternative testing, in
21 lieu of testing requirements for graduation in the receiving state;
22 or 4) in California, the passage of the exit examination adopted
23 pursuant to Section 60850 is required for the student to graduate
24 if the diploma is to be issued by a California public school, as long
25 as it is a requirement in California. In the event the above
26 alternatives cannot be accommodated by the receiving state for a
27 student transferring in his or her Senior year, then the provisions
28 of Section C of this Article shall apply.

29 (C) Transfers during Senior year – Should a military student
30 transferring at the beginning or during his or her Senior year be
31 ineligible to graduate from the receiving local education agency
32 after all alternatives have been considered, the sending and
33 receiving local education agencies shall make best efforts to ensure
34 the receipt of a diploma from the sending local education agency,
35 if the student meets the graduation requirements of the sending
36 local education agency. In the event that one of the states in
37 question is not a member of this compact, the member state shall
38 use best efforts to facilitate the on-time graduation of the student
39 in accordance with Sections A and B of this Article.

40

Article VIII. State Coordination

(A) (1) Each member state shall, through the creation of a State Council or use of an existing body or board, provide for the coordination among its agencies of government, local education agencies and military installations concerning the state's participation in, and compliance with, this compact and Interstate Commission activities. While each member state may determine the membership of its own State Council, its membership must include at least: the state superintendent of education, superintendent of a school district with a high concentration of military children, representative from a military installation, one representative each from the legislative and executive branches of government, and other offices and stakeholder groups the State Council deems appropriate. A member state that does not have a school district deemed to contain a high concentration of military children may appoint a superintendent from another school district to represent local education agencies on the State Council.

(2) In California, members of the State Council shall include all of the following:

(a) The State Superintendent of Public Instruction or his or her designee.

(b) A school district superintendent or his or her designee from a school district with a high concentration of military children, selected by the State Superintendent of Public Instruction.

(c) A representative from a military installation.

(d) A member of the Senate appointed by the Senate Committee on Rules, or his or her designee, who represents a legislative district with a high concentration of military children.

(e) A member of the Assembly appointed by the Speaker of the Assembly, or his or her designee, who represents a legislative district with a high concentration of military children.

(f) The Secretary for Education or his or her designee.

(g) Any other persons appointed by the State Superintendent of Public Instruction.

(B) The State Council of each member state shall appoint or designate a military family education liaison to assist military families and the state in facilitating the implementation of this compact.

1 (C) (1) The compact commissioner responsible for the
2 administration and management of the state's participation in the
3 compact shall be appointed by the Governor or as otherwise
4 determined by each member state.

5 (2) In California, the State Superintendent of Public Instruction
6 shall appoint the compact commissioner.

7 (D) The compact commissioner and the military family
8 education liaison designated herein shall be ex-officio members
9 of the State Council, unless either is already a full voting member
10 of the State Council.

11
12 Article IX. Interstate Commission on Educational Opportunity
13 for Military Children
14

15 The member states hereby create the "Interstate Commission on
16 Educational Opportunity for Military Children." The activities of
17 the Interstate Commission are the formation of public policy and
18 are a discretionary state function. The Interstate Commission shall:

19 (A) Be a body corporate and joint agency of the member states
20 and shall have all the responsibilities, powers and duties set forth
21 herein, and such additional powers as may be conferred upon it
22 by a subsequent concurrent action of the respective legislatures of
23 the member states in accordance with the terms of this compact.

24 (B) Consist of one Interstate Commission voting representative
25 from each member state, who shall be that state's compact
26 commissioner.

27 (1) Each member state represented at a meeting of the Interstate
28 Commission is entitled to one vote.

29 (2) A majority of the total member states shall constitute a
30 quorum for the transaction of business, unless a larger quorum is
31 required by the bylaws of the Interstate Commission.

32 (3) A representative shall not delegate a vote to another member
33 state. In the event the compact commissioner is unable to attend
34 a meeting of the Interstate Commission, the Governor or State
35 Council may delegate voting authority to another person from their
36 state for a specified meeting.

37 (4) The bylaws may provide for meetings of the Interstate
38 Commission to be conducted by telecommunication or electronic
39 communication.

1 (C) Consist of ex-officio, nonvoting representatives who are
2 members of interested organizations. Such ex-officio members,
3 as defined in the bylaws, may include, but not be limited to,
4 members of the representative organizations of military family
5 advocates, local education agency officials, parent and teacher
6 groups, the U.S. Department of Defense, the Education
7 Commission of the States, the Interstate Agreement on the
8 Qualification of Educational Personnel and other interstate
9 compacts affecting the education of children of military members.

10 (D) Meet at least once each calendar year. The chairperson may
11 call additional meetings and, upon the request of a simple majority
12 of the member states, shall call additional meetings.

13 (E) Establish an executive committee, whose members shall
14 include the officers of the Interstate Commission and such other
15 members of the Interstate Commission as determined by the
16 bylaws. Members of the executive committee shall serve a one
17 year term. Members of the executive committee shall be entitled
18 to one vote each. The executive committee shall have the power
19 to act on behalf of the Interstate Commission, with the exception
20 of rulemaking, during periods when the Interstate Commission is
21 not in session. The executive committee shall oversee the
22 day-to-day activities of the administration of the compact, including
23 enforcement and compliance with the provisions of the compact,
24 its bylaws and rules, and other such duties as deemed necessary.
25 The U.S. Dept. of Defense shall serve as an ex-officio, nonvoting
26 member of the executive committee.

27 (F) Establish bylaws and rules that provide for conditions and
28 procedures under which the Interstate Commission shall make its
29 information and official records available to the public for
30 inspection or copying. The Interstate Commission may exempt
31 from disclosure information or official records to the extent they
32 would adversely affect personal privacy rights or proprietary
33 interests.

34 (G) Public notice shall be given by the Interstate Commission
35 of all meetings, and all meetings shall be open to the public, except
36 as set forth in the rules or as otherwise provided in the compact.
37 The Interstate Commission and its committees may close a meeting,
38 or portion thereof, where it determines by two-thirds vote that an
39 open meeting would be likely to:

1 (1) Relate solely to the Interstate Commission's internal
2 personnel practices and procedures;

3 (2) Disclose matters specifically exempted from disclosure by
4 federal and state statute;

5 (3) Disclose trade secrets or commercial or financial information
6 which is privileged or confidential;

7 (4) Involve accusing a person of a crime, or formally censuring
8 a person;

9 (5) Disclose information of a personal nature where disclosure
10 would constitute a clearly unwarranted invasion of personal
11 privacy;

12 (6) Disclose investigative records compiled for law enforcement
13 purposes; or

14 (7) Specifically relate to the Interstate Commission's
15 participation in a civil action or other legal proceeding.

16 (H) For a meeting, or portion of a meeting, closed pursuant to
17 this provision, the Interstate Commission's legal counsel or
18 designee shall certify that the meeting may be closed and shall
19 reference each relevant exemptible provision. The Interstate
20 Commission shall keep minutes which shall fully and clearly
21 describe all matters discussed in a meeting and shall provide a full
22 and accurate summary of actions taken, and the reasons therefor,
23 including a description of the views expressed and the record of
24 a roll call vote. All documents considered in connection with an
25 action shall be identified in such minutes. All minutes and
26 documents of a closed meeting shall remain under seal, subject to
27 release by a majority vote of the Interstate Commission.

28 (I) The Interstate Commission shall collect standardized data
29 concerning the educational transition of the children of military
30 families under this compact as directed through its rules which
31 shall specify the data to be collected, the means of collection and
32 data exchange and reporting requirements. Such methods of data
33 collection, exchange and reporting shall, in so far as is reasonably
34 possible, conform to current technology and coordinate its
35 information functions with the appropriate custodian of records
36 as identified in the bylaws and rules.

37 (J) The Interstate Commission shall create a process that permits
38 military officials, education officials and parents to inform the
39 Interstate Commission if and when there are alleged violations of
40 the compact or its rules or when issues subject to the jurisdiction

1 of the compact or its rules are not addressed by the state or local
2 education agency. This section shall not be construed to create a
3 private right of action against the Interstate Commission or any
4 member state.

5
6 Article X. Powers and Duties of the Interstate Commission

7
8 The Interstate Commission shall have the following powers:

9 (A) To provide for dispute resolution among member states.

10 (B) To promulgate rules and take all necessary actions to effect
11 the goals, purposes, and obligations as specifically set forth in
12 Articles IV, V, VI, and VII of this compact. The rules shall have
13 the force and effect of statutory law and shall be binding in the
14 compact states to the extent and in the manner provided in this
15 compact.

16 (C) To issue, upon request of a member state, advisory opinions
17 concerning the meaning or interpretation of the interstate compact,
18 its bylaws, rules, and actions.

19 (D) To enforce compliance with the compact provisions, the
20 rules promulgated by the Interstate Commission, and the bylaws,
21 using all necessary and proper means, including, but not limited
22 to, the use of judicial process.

23 (E) To establish and maintain offices which shall be located
24 within one or more of the member states.

25 (F) To purchase and maintain insurance and bonds.

26 (G) To borrow, accept, hire, or contract for services of personnel.

27 (H) To establish and appoint committees including, but not
28 limited to, an executive committee as required by Article IX,
29 Section E, which shall have the power to act on behalf of the
30 Interstate Commission in carrying out its powers and duties
31 hereunder.

32 (I) To elect or appoint such officers, attorneys, employees,
33 agents, or consultants, and to fix their compensation, define their
34 duties and determine their qualifications, and to establish the
35 Interstate Commission's personnel policies and programs relating
36 to conflicts of interest, rates of compensation, and qualifications
37 of personnel.

38 (J) To accept any and all donations and grants of money,
39 equipment, supplies, materials, and services, and to receive, utilize,
40 and dispose of it.

1 (K) To lease, purchase, accept contributions or donations of, or
2 otherwise to own, hold, improve or use any property, real, personal,
3 or mixed.

4 (L) To sell, convey, mortgage, pledge, lease, exchange, abandon,
5 or otherwise dispose of any property, real, personal, or mixed.

6 (M) To establish a budget and make expenditures.

7 (N) To adopt a seal and bylaws governing the management and
8 operation of the Interstate Commission.

9 (O) To report annually to the legislatures, governors, judiciary,
10 and state councils of the member states concerning the activities
11 of the Interstate Commission during the preceding year. Such
12 reports shall also include any recommendations that may have
13 been adopted by the Interstate Commission.

14 (P) To coordinate education, training, and public awareness
15 regarding the compact, its implementation and operation for
16 officials and parents involved in such activity.

17 (Q) To establish uniform standards for the reporting, collecting,
18 and exchanging of data.

19 (R) To maintain corporate books and records in accordance with
20 the bylaws.

21 (S) To perform such functions as may be necessary or
22 appropriate to achieve the purposes of this compact.

23 (T) To provide for the uniform collection and sharing of
24 information between and among member states, schools, and
25 military families under this compact.

26
27 Article XI. Organization and Operation of the Interstate
28 Commission
29

30 (A) The Interstate Commission shall, by a majority of the
31 members present and voting, within 12 months after the first
32 Interstate Commission meeting, adopt bylaws to govern its conduct
33 as may be necessary or appropriate to carry out the purposes of
34 the compact, including, but not limited to:

35 (1) Establishing the fiscal year of the Interstate Commission;

36 (2) Establishing an executive committee, and such other
37 committees as may be necessary;

38 (3) Providing for the establishment of committees and for
39 governing any general or specific delegation of authority or
40 function of the Interstate Commission;

1 (4) Providing reasonable procedures for calling and conducting
2 meetings of the Interstate Commission, and ensuring reasonable
3 notice of each such meeting;

4 (5) Establishing the titles and responsibilities of the officers and
5 staff of the Interstate Commission;

6 (6) Providing a mechanism for concluding the operations of the
7 Interstate Commission and the return of surplus funds that may
8 exist upon the termination of the compact after the payment and
9 reserving of all of its debts and obligations.

10 (7) Providing “start up” rules for initial administration of the
11 compact.

12 (B) The Interstate Commission shall, by a majority of the
13 members, elect annually from among its members a chairperson,
14 a vice-chairperson, and a treasurer, each of whom shall have such
15 authority and duties as may be specified in the bylaws. The
16 chairperson or, in the chairperson’s absence or disability, the
17 vice-chairperson, shall preside at all meetings of the Interstate
18 Commission. The officers so elected shall serve without
19 compensation or remuneration from the Interstate Commission;
20 provided that, subject to the availability of budgeted funds, the
21 officers shall be reimbursed for ordinary and necessary costs and
22 expenses incurred by them in the performance of their
23 responsibilities as officers of the Interstate Commission.

24 (C) Executive Committee, Officers and Personnel

25 (1) The executive committee shall have such authority and duties
26 as may be set forth in the bylaws, including, but not limited to:

27 (a) Managing the affairs of the Interstate Commission in a
28 manner consistent with the bylaws and purposes of the Interstate
29 Commission;

30 (b) Overseeing an organizational structure within, and
31 appropriate procedures for the Interstate Commission to provide
32 for the creation of rules, operating procedures, and administrative
33 and technical support functions; and

34 (c) Planning, implementing, and coordinating communications
35 and activities with other state, federal and local government
36 organizations in order to advance the goals of the Interstate
37 Commission.

38 (2) The executive committee may, subject to the approval of
39 the Interstate Commission, appoint or retain an executive director
40 for such period, upon such terms and conditions and for such

1 compensation, as the Interstate Commission may deem appropriate.
2 The executive director shall serve as secretary to the Interstate
3 Commission, but shall not be a Member of the Interstate
4 Commission. The executive director shall hire and supervise such
5 other persons as may be authorized by the Interstate Commission.

6 (D) The Interstate Commission's executive director and its
7 employees shall be immune from suit and liability, either personally
8 or in their official capacity, for a claim for damage to or loss of
9 property or personal injury or other civil liability caused or arising
10 out of or relating to an actual or alleged act, error, or omission that
11 occurred, or that such person had a reasonable basis for believing
12 occurred, within the scope of Interstate Commission employment,
13 duties, or responsibilities; provided, that such person shall not be
14 protected from suit or liability for damage, loss, injury, or liability
15 caused by the intentional or willful and wanton misconduct of such
16 person.

17 (1) The liability of the Interstate Commission's executive
18 director and employees or Interstate Commission representatives,
19 acting within the scope of such person's employment or duties for
20 acts, errors, or omissions occurring within such person's state,
21 may not exceed the limits of liability set forth under the
22 Constitution and laws of that state for state officials, employees,
23 and agents. The Interstate Commission is considered to be an
24 instrumentality of the states for the purposes of any such action.
25 Nothing in this subsection shall be construed to protect such person
26 from suit or liability for damage, loss, injury, or liability caused
27 by the intentional or willful and wanton misconduct of such person.

28 (2) The Interstate Commission shall defend the executive
29 director and its employees and, subject to the approval of the
30 Attorney General or other appropriate legal counsel of the member
31 state represented by an Interstate Commission representative, shall
32 defend such Interstate Commission representative in any civil
33 action seeking to impose liability arising out of an actual or alleged
34 act, error or omission that occurred within the scope of Interstate
35 Commission employment, duties or responsibilities, or that the
36 defendant had a reasonable basis for believing occurred within the
37 scope of Interstate Commission employment, duties, or
38 responsibilities, provided that the actual or alleged act, error, or
39 omission did not result from intentional or willful and wanton
40 misconduct on the part of such person.

(3) To the extent not covered by the state involved, member state, or the Interstate Commission, the representatives or employees of the Interstate Commission shall be held harmless in the amount of a settlement or judgment, including attorney's fees and costs, obtained against such persons arising out of an actual or alleged act, error, or omission that occurred within the scope of Interstate Commission employment, duties, or responsibilities, or that such persons had a reasonable basis for believing occurred within the scope of Interstate Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from intentional or willfull and wanton misconduct on the part of such persons.

Article XII. Rulemaking Functions of the Interstate Commission

(A) Rulemaking Authority – The Interstate Commission shall promulgate reasonable rules in order to effectively and efficiently achieve the purposes of this compact, as specifically set forth in Articles IV, V, VI, and VII. Notwithstanding the foregoing, in the event the Interstate Commission exercises its rulemaking authority in a manner that is beyond the scope of the specific matters set forth in Articles IV, V, VI, and VII of this Act, or the powers granted hereunder, then such an action by the Interstate Commission shall be invalid and have no force or effect.

(B) Rulemaking Procedure – Rules shall be made pursuant to a rulemaking process that substantially conforms to the “Model State Administrative Procedure Act,” of 1981, Uniform Laws Annotated, Vol. 15, p.1 (2000) as amended, as may be appropriate to the operations of the Interstate Commission.

(C) Not later than thirty (30) days after a rule is promulgated, any person may file a petition for judicial review of the rule; provided, that the filing of such a petition shall not stay or otherwise prevent the rule from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Interstate Commission consistent with applicable law and shall not find the rule to be unlawful if the rule represents a reasonable exercise of the Interstate Commission's authority.

1 (D) If a majority of the legislatures of the compacting states
2 rejects a Rule by enactment of a statute or resolution in the same
3 manner used to adopt the compact, then such rule shall have no
4 further force and effect in any compacting state.

5
6 Article XIII. Oversight, Enforcement, and Dispute Resolution

7
8 (A) Oversight

9 (1) The executive, legislative and judicial branches of state
10 government in each member state shall enforce this compact, and
11 shall take all actions necessary and appropriate to effectuate the
12 compact's purposes and intent. The provisions of this compact and
13 the rules promulgated hereunder shall have standing as statutory
14 law.

15 (2) All courts shall take judicial notice of the compact and the
16 rules in any judicial or administrative proceeding in a member
17 state pertaining to the subject matter of this compact which may
18 affect the powers, responsibilities or actions of the Interstate
19 Commission.

20 (3) The Interstate Commission shall be entitled to receive all
21 service of process in any such proceeding, and shall have standing
22 to intervene in the proceeding for all purposes. Failure to provide
23 service of process to the Interstate Commission shall render a
24 judgment or order void as to the Interstate Commission, this
25 compact or promulgated rules.

26 (B) Default, Technical Assistance, Suspension and Termination
27 – If the Interstate Commission determines that a member state has
28 defaulted in the performance of its obligations or responsibilities
29 under this compact, or the bylaws or promulgated rules, the
30 Interstate Commission shall:

31 (1) Provide written notice, to the defaulting state and other
32 member states, of the nature of the default, the means of curing
33 the default and any action taken by the Interstate Commission.
34 The Interstate Commission shall specify the conditions by which
35 the defaulting state must cure its default.

36 (2) Provide remedial training and specific technical assistance
37 regarding the default.

38 (3) If the defaulting state fails to cure the default, the defaulting
39 state shall be terminated from the compact upon an affirmative
40 vote of a majority of the member states and all rights, privileges

1 and benefits conferred by this compact shall be terminated from
2 the effective date of termination. A cure of the default does not
3 relieve the offending state of obligations or liabilities incurred
4 during the period of the default.

5 (4) Suspension or termination of membership in the compact
6 shall be imposed only after all other means of securing compliance
7 have been exhausted. Notice of intent to suspend or terminate shall
8 be given by the Interstate Commission to the Governor, the
9 majority and minority leaders of the defaulting state's legislature,
10 and each of the member states.

11 (5) The state which has been suspended or terminated is
12 responsible for all assessments, obligations and liabilities incurred
13 through the effective date of suspension or termination including
14 obligations, the performance of which extends beyond the effective
15 date of suspension or termination.

16 (6) The Interstate Commission shall not bear any costs relating
17 to any state that has been found to be in default or which has been
18 suspended or terminated from the compact, unless otherwise
19 mutually agreed upon in writing between the Interstate Commission
20 and the defaulting state.

21 (7) The defaulting state may appeal the action of the Interstate
22 Commission by petitioning the U.S. District Court for the District
23 of Columbia or the federal district where the Interstate Commission
24 has its principal offices. The prevailing party shall be awarded all
25 costs of such litigation including reasonable attorney's fees.

26 (C) Dispute Resolution

27 (1) The Interstate Commission shall attempt, upon the request
28 of a member state, to resolve disputes which are subject to the
29 compact and which may arise among member states and between
30 member and nonmember states.

31 (2) The Interstate Commission shall promulgate a rule providing
32 for both mediation and binding dispute resolution for disputes as
33 appropriate.

34 (D) Enforcement

35 (1) The Interstate Commission, in the reasonable exercise of its
36 discretion, shall enforce the provisions and rules of this compact.

37 (2) The Interstate Commission may, by majority vote of the
38 members, initiate legal action in the United States District Court
39 for the District of Columbia or, at the discretion of the Interstate
40 Commission, in the federal district where the Interstate

1 Commission has its principal offices, to enforce compliance with
2 the provisions of the compact or its promulgated rules and bylaws
3 against a member state in default. The relief sought may include
4 both injunctive relief and damages. In the event judicial
5 enforcement is necessary, the prevailing party shall be awarded
6 all costs of such litigation including reasonable attorney's fees.

7 (3) The remedies herein shall not be the exclusive remedies of
8 the Interstate Commission. The Interstate Commission may avail
9 itself of any other remedies available under state law or the
10 regulation of a profession.

11
12 Article XIV. Financing of the Interstate Commission
13

14 (A) The Interstate Commission shall pay, or provide for the
15 payment of, the reasonable expenses of its establishment,
16 organization and ongoing activities.

17 (B) The Interstate Commission may levy on and collect an
18 annual assessment from each member state to cover the cost of
19 the operations and activities of the Interstate Commission and its
20 staff which must be in a total amount sufficient to cover the
21 Interstate Commission's annual budget as approved each year.
22 The aggregate annual assessment amount shall be allocated based
23 upon a formula to be determined by the Interstate Commission,
24 which shall promulgate a rule binding upon all member states.

25 (C) The Interstate Commission shall not incur obligations of
26 any kind prior to securing the funds adequate to meet the same;
27 nor shall the Interstate Commission pledge the credit of any of the
28 member states, except by and with the authority of the member
29 state.

30 (D) The Interstate Commission shall keep accurate accounts of
31 all receipts and disbursements. The receipts and disbursements of
32 the Interstate Commission shall be subject to the audit and
33 accounting procedures established under its bylaws. However, all
34 receipts and disbursements of funds handled by the Interstate
35 Commission shall be audited yearly by a certified or licensed public
36 accountant, and the report of the audit shall be included in and
37 become part of the annual report of the Interstate Commission.

38
39 Article XV. Member, States, Effective Date and Amendment
40

1 (A) Any state is eligible to become a member state.

2 (B) The compact shall become effective and binding upon
3 legislative enactment of the compact into law by no less than ten
4 (10) of the states. The effective date shall be no earlier than
5 December 1, 2007. Thereafter it shall become effective and binding
6 as to any other member state upon enactment of the compact into
7 law by that state. The governors of non-member states or their
8 designees shall be invited to participate in the activities of the
9 Interstate Commission on a nonvoting basis prior to adoption of
10 the compact by all states.

11 (C) The Interstate Commission may propose amendments to
12 the compact for enactment by the member states. No amendment
13 shall become effective and binding upon the Interstate Commission
14 and the member states unless and until it is enacted into law by
15 unanimous consent of the member states.

16
17 Article XVI. Withdrawal and Dissolution
18

19 (A) Withdrawal

20 (1) Once effective, the compact shall continue in force and
21 remain binding upon each and every member state; provided that
22 a member state may withdraw from the compact by specifically
23 repealing the statute which enacted the compact into law.

24 (2) Withdrawal from this compact shall be by the enactment of
25 a statute repealing the same, but shall not take effect until one (1)
26 year after the effective date of such statute and until written notice
27 of the withdrawal has been given by the withdrawing state to the
28 Governor of each other member jurisdiction.

29 (3) The withdrawing state shall immediately notify the
30 chairperson of the Interstate Commission in writing upon the
31 introduction of legislation repealing this compact in the
32 withdrawing state. The Interstate Commission shall notify the other
33 member states of the withdrawing state's intent to withdraw within
34 sixty (60) days of its receipt thereof.

35 (4) The withdrawing state is responsible for all assessments,
36 obligations and liabilities incurred through the effective date of
37 withdrawal, including obligations, the performance of which extend
38 beyond the effective date of withdrawal.

1 (5) Reinstatement following withdrawal of a member state shall
2 occur upon the withdrawing state reenacting the compact or upon
3 such later date as determined by the Interstate Commission.

4 (B) Dissolution of Compact

5 (1) This compact shall dissolve effective upon the date of the
6 withdrawal or default of the member state which reduces the
7 membership in the compact to one (1) member state.

8 (2) Upon the dissolution of this compact, the compact becomes
9 null and void and shall be of no further force or effect, and the
10 business and affairs of the Interstate Commission shall be
11 concluded and surplus funds shall be distributed in accordance
12 with the bylaws.

13
14 Article XVII. Severability and Construction

15
16 (A) The provisions of this compact shall be severable, and if
17 any phrase, clause, sentence or provision is deemed unenforceable,
18 the remaining provisions of the compact shall be enforceable.

19 (B) The provisions of this compact shall be liberally construed
20 to effectuate its purposes.

21 (C) Nothing in this compact shall be construed to prohibit the
22 applicability of other interstate compacts to which the states are
23 members.

24
25 Article XVIII. Binding Effect of Compact and Other Laws

26
27 (A) Other Laws

28 (1) Nothing herein prevents the enforcement of any other law
29 of a member state that is not inconsistent with this compact.

30 (2) All member states' laws conflicting with this compact are
31 superseded to the extent of the conflict.

32 (B) Binding Effect of the Compact

33 (1) All lawful actions of the Interstate Commission, including
34 all rules and bylaws promulgated by the Interstate Commission,
35 are binding upon the member states.

36 (2) All agreements between the Interstate Commission and the
37 member states are binding in accordance with their terms.

38 (3) In the event any provision of this compact exceeds the
39 constitutional limits imposed on the legislature of any member

1 state, such provision shall be ineffective to the extent of the conflict
2 with the constitutional provision in question in that member state.

3 SEC. 45. Section 51241 of the Education Code, as amended
4 by Section 55 of Chapter 140 of the Statutes of 2009, is repealed.

5 SEC. 46. Section 52055.770 of the Education Code is amended
6 to read:

7 52055.770. (a) School districts and chartering authorities shall
8 receive funding at the following rate, on behalf of funded schools:

9 (1) For kindergarten and grades 1 to 3, inclusive, five hundred
10 dollars (\$500) per enrolled pupil in funded schools.

11 (2) For grades 4 to 8, inclusive, nine hundred dollars (\$900) per
12 enrolled pupil in funded schools.

13 (3) For grades 9 to 12, inclusive, one thousand dollars (\$1,000)
14 per enrolled pupil in funded schools.

15 (b) For purposes of subdivision (a), enrollment of a pupil in a
16 funded school in the prior fiscal year shall be based on data from
17 the CBEDS. For the 2007–08 fiscal year, the funded rates shall be
18 reduced to reflect the percentage difference in the total amounts
19 appropriated for purposes of this section in that year compared to
20 the amounts appropriated for purposes of this section in the
21 2008–09 fiscal year.

22 (c) The following amounts are hereby appropriated from the
23 General Fund for the purposes set forth in subdivision (f):

24 (1) For the 2007–08 fiscal year, three hundred million dollars
25 (\$300,000,000), to be allocated as follows:

26 (A) Thirty-two million dollars (\$32,000,000) for transfer by the
27 Controller to Section B of the State School Fund for allocation by
28 the Chancellor of the California Community Colleges to
29 community colleges for the purpose of providing funding to the
30 community colleges to improve and expand career technical
31 education in public secondary education and lower division public
32 higher education pursuant to Section 88532, including the hiring
33 of additional faculty to expand the number of career technical
34 education programs and course offerings.

35 (B) Two hundred sixty-eight million dollars (\$268,000,000) for
36 transfer by the Controller to Section A of the State School Fund
37 for allocation by the Superintendent pursuant to this article.

38 (2) For each of the 2008–09, and 2010–11 to 2014–15 fiscal
39 years, inclusive, four hundred fifty million dollars (\$450,000,000)
40 per fiscal year, to be allocated as follows:

1 (A) Forty-eight million dollars (\$48,000,000) for transfer by
2 the Controller to Section B of the State School Fund for allocation
3 by the Chancellor of the California Community Colleges to
4 community colleges as required under subdivision (e).

5 (B) Four hundred two million dollars (\$402,000,000) for transfer
6 by the Controller to Section A of the State School Fund for
7 allocation by the Superintendent pursuant to this article.

8 (C) Commencing with the 2010–11 fiscal year, payments made
9 pursuant to subparagraphs (A) and (B) shall be made only on or
10 after October 8 of each fiscal year.

11 (d) For the 2013–14 fiscal year the amounts appropriated under
12 subdivision (c) shall be adjusted to reflect the total fiscal settlement
13 agreed to by the parties in California Teachers Association, et al.
14 v. Arnold Schwarzenegger (Case Number 05CS01165 of the
15 Superior Court for the County of Sacramento) and the sum of all
16 fiscal years of funding provided to fund this article shall not exceed
17 the total funds agreed to by those parties. This annual appropriation
18 shall continue to be made until the Director of Finance reports to
19 the Legislature, along with all proposed adjustments to the
20 Governor’s Budget pursuant to Section 13308 of the Government
21 Code, that the sum of appropriations made and allocated pursuant
22 to subdivision (c) equals the total outstanding balance of the
23 minimum state educational funding obligation to school districts
24 and community college districts required by Section 8 of Article
25 XVI of the California Constitution and Chapter 213 of the Statutes
26 of 2004 for the 2004–05 and 2005–06 fiscal years, as determined
27 in subdivision (a) or (b) of Section 41207.1.

28 (e) The sum transferred under subparagraph (A) of paragraph
29 (2) of subdivision (c) for the 2008–09 fiscal year shall be allocated
30 by the Chancellor of the California Community Colleges as
31 follows:

32 (1) Thirty-eight million dollars (\$38,000,000) to the community
33 colleges for the purpose of providing funding to the community
34 colleges to improve and expand career technical education in public
35 secondary education and lower division public higher education
36 pursuant to Section 88532, including the hiring of additional faculty
37 to expand the number of career technical education programs and
38 course offerings.

39 (2) Ten million dollars (\$10,000,000) to the community colleges
40 for the purpose of providing one-time block grants to community

1 college districts to be used for one-time items of expenditure,
2 including, but not limited to, the following purposes:

3 (A) Physical plant, scheduled maintenance, deferred
4 maintenance, and special repairs.

5 (B) Instructional materials and support.

6 (C) Instructional equipment, including equipment related to
7 career technical education, with priority for nursing program
8 equipment.

9 (D) Library materials.

10 (E) Technology infrastructure.

11 (F) Hazardous substances abatement, cleanup, and repair.

12 (G) Architectural barrier removal.

13 (H) State-mandated local programs.

14 (3) The Chancellor of the California Community Colleges shall
15 allocate the amount allocated pursuant to paragraph (2) to
16 community college districts on an equal amount per actual full-time
17 equivalent student (FTES) reported for the prior fiscal year, except
18 that each community college district shall be allocated an amount
19 not less than fifty thousand dollars (\$50,000), and the equal amount
20 per unit of FTES shall be computed accordingly.

21 (4) Funds allocated under paragraph (2) shall supplement and
22 not supplant existing expenditures and may not be counted as the
23 district contribution for physical plant projects and instructional
24 material purchases funded in Item 6870-101-0001 of Section 2.00
25 of the annual Budget Act.

26 (f) For each fiscal year, commencing with the 2010–11 fiscal
27 year, to the 2014–15 fiscal year, inclusive, the sum transferred
28 pursuant to subparagraph (A) of paragraph (2) of subdivision (c)
29 shall be allocated by the Chancellor of the California Community
30 Colleges as follows: Forty-eight million dollars (\$48,000,000) to
31 the community colleges for the purpose of providing funding to
32 the community colleges to improve and expand career technical
33 education in public secondary education and lower division public
34 higher education pursuant to Section 88532, including the hiring
35 of additional faculty to expand the number of career technical
36 education programs and course offerings.

37 (g) The appropriations made under subdivision (c) are for the
38 purpose of discharging in full the minimum state educational
39 funding obligation to school districts and community college
40 districts pursuant to Section 8 of Article XVI of the California

1 Constitution and Chapter 213 of the Statutes of 2004 for the
2 2004–05 fiscal year, and the outstanding maintenance factor for
3 the 2005–06 fiscal year resulting from this additional payment of
4 the Chapter 213 amount for the 2004–05 fiscal year.

5 (h) For the purposes of making the computations required by
6 Section 8 of Article XVI of the California Constitution, including
7 computation of the state’s minimum funding obligation to school
8 districts and community college districts in subsequent fiscal years,
9 the first one billion six hundred twenty million nine hundred
10 twenty-eight thousand dollars (\$1,620,928,000) in appropriations
11 made pursuant to subdivision (c) shall be deemed to be “General
12 Fund revenues appropriated for school districts,” as defined in
13 subdivision (c) of Section 41202 and “General Fund revenues
14 appropriated for community college districts,” as defined in
15 subdivision (d) of Section 41202, for the 2004–05 fiscal year and
16 included within the “total allocations to school districts and
17 community college districts from General Fund proceeds of taxes
18 appropriated pursuant to Article XIII B,” as defined in subdivision
19 (e) of Section 41202, for that fiscal year. The remaining
20 appropriations made pursuant to subdivision (c) shall be deemed
21 to be “General Fund revenues appropriated for school districts,”
22 as defined in subdivision (c) of Section 41202 and “General Fund
23 revenues appropriated for community college districts,” as defined
24 in subdivision (d) of Section 41202, for the 2005–06 fiscal year
25 and included within the “total allocations to school districts and
26 community college districts from General Fund proceeds of taxes
27 appropriated pursuant to Article XIII B,” as defined in subdivision
28 (e) of Section 41202, for that fiscal year.

29 (i) From funds appropriated under subdivision (c), the
30 Superintendent shall provide both of the following:

31 (1) Not more than two million dollars (\$2,000,000) annually to
32 county superintendents of schools to carry out the requirements
33 of this article, allocated in a manner similar to that created to carry
34 out the new duties of those superintendents under the settlement
35 agreement in the case of *Williams v. California* (Super. Ct. San
36 Francisco, No. CGC-00-312236).

37 (2) Five million dollars (\$5,000,000) in the 2007–08 fiscal year
38 to support regional assistance under Section 52055.730. It is the
39 intent of the Legislature that the Superintendent and the secretary,
40 along with county offices of education, seek foundational and other

1 financial support to sustain and expand these services. Funds
2 provided under this paragraph that are not expended in the 2007–08
3 fiscal year shall be reappropriated for use in subsequent fiscal years
4 for the same purpose.

5 (j) Notwithstanding any other provision of law, funds
6 appropriated under subdivision (c) but not allocated to schools
7 with kindergarten or grades 1 to 12, inclusive, in a fiscal year, due
8 to program termination in any year or otherwise, shall be available
9 for reappropriation only in furtherance of the purposes of this
10 article. First priority for those amounts shall be to provide
11 cost-of-living increases and enrollment growth adjustments to
12 funded schools.

13 (k) The sum of three hundred fifty thousand dollars (\$350,000)
14 is hereby appropriated from the General Fund to the State
15 Department of Education to fund 3.0 positions to implement this
16 article. Funding provided under this subdivision is not part of funds
17 provided pursuant to subdivision (c).

18 SEC. 47. Section 52165 of the Education Code is amended to
19 read:

20 52165. Each pupil of limited English proficiency enrolled in
21 the California public school system in kindergarten and grades 1
22 to 12, inclusive, shall receive instruction in a language
23 understandable to the pupil that recognizes the pupil's primary
24 language and teaches the pupil English.

25 (a) In kindergarten and grades 1 to 6, inclusive, the following
26 shall apply:

27 (1) If the language census indicates that any school of a school
28 district has 10 or more pupils of limited English proficiency with
29 the same primary language in the same grade level or 10 or more
30 pupils of limited English proficiency with the same primary
31 language, in the same age group, and in a multigrade or ungraded
32 instructional environment, the school district shall offer instruction
33 pursuant to subdivision (a), (b), or (c) of Section 52163 for those
34 pupils at the school. If there are pupils of limited English
35 proficiency with different primary languages who do not otherwise
36 satisfy the program requirements of subdivision (a), (b), or (c) of
37 Section 52163 or of this subdivision, a language development
38 specialist defined in subdivision (b) may be used.

39 (2) To the extent state or federal categorical funds are available,
40 the services, as described in this paragraph, are required for pupils

1 of limited English proficiency in concentrations of fewer than 10
2 per grade level. If there are fewer than 10 pupils of limited English
3 proficiency in the same grade, but at least 20 pupils of limited
4 English proficiency in the school with the same primary language,
5 the school district shall provide at least one certified
6 bilingual-crosscultural teacher or teachers on waiver as defined in
7 Section 52178 and an elementary level individual learning program
8 as defined in subdivision (f) of Section 52163 for those pupils at
9 the school. If the number of pupils of limited English proficiency
10 in the school exceeds 45, the district shall provide two of those
11 teachers. These teachers may be used as resource teachers or team
12 teachers or to provide any other services to pupils of limited
13 English proficiency as the district deems appropriate. These
14 teachers shall be different teachers than those required pursuant
15 to paragraph (1).

16 (b) The Legislature recognizes that in the past equal educational
17 opportunities have not been fully available to secondary pupils of
18 limited English proficiency. It is the intent of the Legislature to
19 encourage school districts to offer a language learning program
20 pursuant to subdivision (d) of Section 52163. Certified
21 bilingual-crosscultural teachers or, if those teachers are not
22 available, language development specialists assisted by a bilingual
23 aide shall be qualified to provide instruction for those programs.
24 Language development specialists shall be formally trained and
25 competent in the field of English language learning, including
26 second language acquisition and development, structure of modern
27 English, and basic principles of linguistics, and shall meet the
28 culture and methodology competencies established by subdivisions
29 (b) and (c) of Section 44253.5. The Commission on Teacher
30 Credentialing shall provide for the assessment of language
31 competencies specified in this section and shall modify existing
32 culture and methodology competency for language development
33 specialist to ensure that they meet the crosscultural and
34 instructional methodologies for pupils being served by those
35 teachers. A teacher of English to speakers of other languages
36 certificate from a commission-approved teacher training institution
37 of higher education that meets the criteria established by the
38 commission pursuant to Section 44253.5 shall be accepted instead
39 of the methodology requirement.

(c) In kindergarten and grades 1 to 12, inclusive, pupils of limited English proficiency who are not enrolled in a program described in subdivision (a), (b), (c), or (d) of Section 52163 shall be individually evaluated and shall receive educational services defined in subdivision (e) or (f), as appropriate, of Section 52163. These services shall be provided in consultation with the pupil and the parent, parents, or guardian of the pupil.

(d) As a part of its consolidated application for categorical program funds, each district receiving those funds shall include a specific plan indicating the ways in which the individual learning plans will meet the needs of pupils of limited English proficiency. The plan shall describe all of the following:

(1) Procedures used in making the individual evaluation.

(2) The pupils' levels of English and primary language proficiency and levels of educational performance.

(3) Instructional objectives and scope of educational services to be provided.

(4) Periodic evaluation procedures, using objective criteria, to determine whether the instructional objectives are being met.

SEC. 48. Section 53302 of the Education Code is amended to read:

53302. (a) No more than 75 schools shall be subject to a petition authorized by this article.

(b) A petition shall be counted toward this limit upon the Superintendent and state board receiving notice from the local educational agency of its final disposition of the petition.

SEC. 49. Section 60852.3 of the Education Code is amended to read:

60852.3. (a) Notwithstanding any other provision of law, commencing with the 2009–10 school year, an eligible pupil with a disability is not required to pass the high school exit examination established pursuant to Section 60850 as a condition of receiving a diploma of graduation or as a condition of graduation from high school.

(b) This exemption shall last until the state board, pursuant to Section 60852.1, makes a determination that the alternative means by which an eligible pupil with disabilities may demonstrate the same level of academic achievement in the portions of, or those content standards required for passage of, the high school exit

1 examination are not feasible or that the alternative means are
2 implemented.

3 (c) For the purposes of this section, an eligible pupil with a
4 disability is a pupil with an individualized education program
5 adopted pursuant to the federal Individuals with Disabilities
6 Education Act (20 U.S.C. Sec. 1400 et seq.) or a plan adopted
7 pursuant to Section 504 of the federal Rehabilitation Act of 1973
8 (29 U.S.C. Sec. 794(a)) that indicates the pupil is scheduled to
9 receive a high school diploma, and that the pupil has satisfied or
10 will satisfy all other state and local requirements for the receipt of
11 a high school diploma, on or after July 1, 2009.

12 (d) A local educational agency, as defined in Section 56026.3,
13 shall not adopt an individualized education program pursuant to
14 the federal Individuals with Disabilities Education Act or a plan
15 pursuant to Section 504 of the federal Rehabilitation Act of 1973
16 for a pupil for the sole purpose of exempting the pupil from the
17 requirement to pass the high school exit examination as a condition
18 of receiving a high school diploma, unless that adoption is
19 consistent with federal law.

20 (e) Pursuant to subdivision (b) of Section 60851, pupils with
21 exceptional needs shall take the high school exit examination in
22 grade 10 for purposes of fulfilling the requirements of the federal
23 No Child Left Behind Act of 2001 (20 U.S.C. Sec. 7114).

24 SEC. 50. Section 67302.5 of the Education Code is amended
25 to read:

26 67302.5. (a) As used in this section, the following terms have
27 the following meanings:

28 (1) "Captioned" or "captioning" means the display of text
29 corresponding to, and synchronized with, the spoken-word audio
30 portion of instructional material.

31 (2) "Electronic format" means a computer file or other digital
32 medium that embodies instructional material, is not itself captioned,
33 but from which a captioned format may be created using
34 commercially available technology.

35 (3) "Institution" means the University of California, the
36 California State University, a California Community College, or
37 any campus or location of any of those institutions.

38 (4) "Instructional material" means any audiovisual work, as that
39 term is defined in Section 101 of Title 17 of the United States
40 Code, that is created and published primarily for use by students

1 in postsecondary instruction, and is required for a student's success
2 in a course of study in which a student with a disability is enrolled.
3 The determination of which materials are "required for student
4 success" shall be made by the instructor of the course in
5 consultation with the official making the request pursuant to
6 subdivision (b) in accordance with guidelines issued pursuant to
7 subdivision (i).

8 (5) "Publisher" means any individual, firm, partnership, or
9 corporation that is engaged in the business, whether for profit or
10 not for profit, of selling instructional material in which it owns or
11 controls some or all of the copyright to that material. "Publisher"
12 does not include any entity that is a subdivision of any state or
13 other governmental body, other than the State of California.

14 (6) "Writing" includes facsimile transmission and e-mail.

15 (b) (1) A publisher that publishes instructional material used
16 by students attending, or by instructors for use in classroom
17 presentations at, the University of California, the California State
18 University, or a California Community College, shall, upon request
19 by an institution on behalf of a student or instructor at that
20 institution, do one of the following:

21 (A) Provide access to a captioned format of the instructional
22 material directly to the student or the instructor by providing an
23 Internet password, delivery of a disk or file, or in any other
24 appropriate manner.

25 (B) Provide to the institution a captioned format of the
26 instructional material.

27 (C) Provide to the institution an electronic format, if available,
28 of the instructional material, unless the institution already has an
29 electronic format in its possession, and a license permitting the
30 institution to create a captioned format of the material, to the extent
31 the publisher has the right to grant that license.

32 (2) A publisher shall respond to a properly addressed request
33 that meets the requirements of subdivision (c) in the following
34 manner, as applicable:

35 (A) Within 10 calendar days after the receipt of the request, the
36 publisher shall provide to the institution a notice, in writing, as to
37 which of the three actions in paragraph (1) it intends to take.

38 (B) If the publisher does not possess an electronic format of the
39 instructional material, it shall advise the institution of that fact in
40 the notice provided pursuant to subparagraph (A).

1 (C) If the publisher lacks sufficient rights to distribute, or license
2 the institution to create, a captioned format of some or all of the
3 instructional material covered by the request, it shall advise the
4 institution of that fact in the notice provided pursuant to
5 subparagraph (A), and shall provide both of the following to the
6 institution, to the extent that the publisher is able to do so:

7 (i) An electronic format of the instructional material to which
8 the publisher does not control the applicable rights.

9 (ii) The name and contact information of the person that the
10 publisher believes to be capable of authorizing creation of a
11 captioned format of the instructional material. Any person capable
12 of authorizing the creation of the captioned format shall be deemed
13 to be the publisher of that material for purposes of this section.

14 (D) If the publisher notifies the institution that it will provide
15 an electronic format and a license permitting the institution to
16 create a captioned format, it shall provide the electronic format
17 and the license within seven calendar days of providing the notice
18 pursuant to subparagraph (A).

19 (E) If the publisher notifies the institution that it will provide a
20 captioned format of the requested material, the publisher shall
21 provide the captioned format as soon as it is possible to do so, but
22 not later than 14 calendar days after providing the notice pursuant
23 to subparagraph (A).

24 (3) If a publisher fails to respond to a request, as required by
25 paragraph (2), within 10 calendar days of receiving the request,
26 the institution shall be deemed to have received a license permitting
27 the institution to create a captioned format of the instructional
28 material.

29 (c) (1) An institution, if it chooses to submit a request pursuant
30 to subdivision (b), shall include in the request all of the following:

31 (A) Certification that the institution or an instructor at that
32 institution has purchased the instructional material either (i) for
33 use by a student with an auditory disability that prevents the student
34 from using the instructional material in a noncaptioned format or
35 (ii) for use in a class in which a student with such a disability is
36 enrolled, or that a student with such a disability attending, or
37 registered to attend, that institution has purchased the instructional
38 material.

1 (B) Certification that the student has an auditory disability that
2 prevents the student from using instructional material in
3 noncaptioned format.

4 (C) Certification that the instructional material is for use by the
5 student or an instructor in connection with a course in which the
6 student is registered or enrolled at the institution.

7 (D) The signature of the coordinator of services for students
8 with disabilities at the institution, or by an official responsible for
9 monitoring compliance with the Americans with Disabilities Act
10 of 1990 (42 U.S.C. 12101 et seq.) at the institution.

11 (E) At a minimum, an e-mail address and a facsimile number
12 at which the person signing the request may be contacted.

13 (2) A publisher may require, in addition to the requirements
14 enumerated in paragraph (1), a request to include a statement signed
15 by the student agreeing to both of the following:

16 (A) He or she will use the captioned format of the instructional
17 material solely for his or her own educational purposes.

18 (B) He or she will not distribute or reproduce the captioned
19 format for use by others.

20 (d) (1) Any institution possessing an electronic format of an
21 instructional material shall take reasonable precautions to ensure
22 that the electronic format is not distributed to any third party,
23 except as provided in paragraph (2) and subdivision (e), and shall,
24 to the extent possible, maintain in effect all copy-protection
25 measures embedded in any electronic format provided by a
26 publisher.

27 (2) An institution may retain an outside vendor to assist it in
28 the exercise of rights granted to it by a publisher or by this section,
29 and shall ensure, pursuant to an agreement that the publisher and
30 the institution shall both have the power to enforce, that the
31 electronic format is not further distributed and that any captioned
32 format made from it is provided only to the institution.

33 (e) (1) If a publisher provides to an institution a captioned
34 format of instructional materials, the institution shall provide the
35 captioned format to the student or instructor on whose behalf the
36 request was made and may retain a copy of that captioned format.

37 (2) Except as provided in paragraph (4), if a publisher grants
38 an institution a license to create a captioned format, the institution
39 shall provide a copy of the resulting captioned format to the
40 publisher and may retain a copy of the captioned format.

1 (3) Pursuant to paragraph (1) or (2), the institution may provide
2 additional copies to any other of its students, any instructor
3 employed by the institution for classroom use, any student at any
4 other institution, or any other institution for classroom use, if the
5 institution collects and forwards to the publisher all institutional
6 and student certifications required under subdivision (b).

7 (4) The institution shall cease to distribute additional copies of
8 a captioned format to any other institution if either of the following
9 occurs:

10 (A) The institution receives notice that a captioned format has
11 become commercially available from the publisher or other
12 copyright owner of the instructional material. However, if this
13 occurs, the institution may continue to allow its own instructors
14 to use any captioned format that the institution previously created.

15 (B) The publisher, or other copyright owner, of the instructional
16 material notifies the institution that the institution's captioned
17 format contains material errors or omissions.

18 (5) An instructor who receives a captioned format, or access to
19 a captioned format pursuant to subparagraph (A) of paragraph (1)
20 of subdivision (b), shall not use the captioned format for any
21 purposes except for the classroom use for which the captioned
22 format was requested or, in accordance with paragraph (3), for use
23 in other classes at the institution with which the instructor is
24 affiliated at the time that a request was made pursuant to
25 subdivision (b).

26 (f) (1) The Chancellor of the California Community Colleges,
27 the Chancellor of the California State University, and the President
28 of the University of California may each designate an office, or
29 may by agreement designate a single office, to maintain a registry
30 of publisher contact information. A registry office designated
31 pursuant to this subdivision may be a center described in
32 subdivision (g) of this section or subdivision (g) of Section 67302.

33 (2) A publisher intending to sell instructional materials in the
34 state shall provide to the office designated pursuant to paragraph
35 (1) the name and contact information of its office or employee
36 designated to handle requests made under this section, or an
37 Internet Web site containing that information. If a publisher fails
38 to provide that information, a request under subdivision (b) may
39 be sent to a publisher at the address of its primary place of business,
40 to the attention of its rights and permissions department.

(g) The Chancellor of the California Community Colleges, the Chancellor of the California State University, and the President of the University of California may each establish one or more centers within their respective segments to process requests pursuant to this section. A center under this subdivision may be a center established under subdivision (g) of Section 67302. All of the following requirements apply with respect to any center established or designated for the purposes of this subdivision:

(1) If an institution designated as within the jurisdiction of a center chooses to process requests in the manner set forth in this subdivision, it shall submit all requests made under this section to the center, which shall transmit these requests to publishers.

(2) Each center shall make every effort to coordinate requests within its segment.

(3) A publisher shall not be required to respond to requests from institutions that a center has been designated to represent, unless those requests are communicated through the center.

(4) The center shall, in handling all electronic formats and captioned formats for the benefit of students enrolled in the institutions the center represents, have the same rights and obligations arising under subdivisions (d) and (e) as the institutions on whose behalf it acts.

(h) Access to a captioned format, an electronic format, or a license to create a captioned format pursuant to subdivision (b) shall be provided free of any fee or royalty that is additional to the initial purchase of the instructional material by the student, the instructor, or the institution.

(i) (1) The Board of Governors of the California Community Colleges and the Trustees of the California State University may, and the Regents of the University of California are requested to, adopt guidelines consistent with this section for its implementation and administration. It is the intent of the Legislature that the guidelines, if adopted, address all of the following:

(A) The designation of materials deemed “required for student success.”

(B) The procedures and standards relating to distribution of files and materials pursuant to subdivisions (b), (d), and (e).

(C) The possibility of involving outside networks or partnerships between publishers and institutions to provide for access to instructional materials for students with disabilities and to facilitate

1 the issuance of licenses by publishers under subparagraph (C) of
2 paragraph (1), and paragraph (3), of subdivision (b).

3 (D) Other matters as are deemed necessary or appropriate to
4 carry out the purposes of this section.

5 (2) For purposes of paragraph (1), the Board of Governors of
6 the California Community Colleges, the Trustees of the California
7 State University, and the University of California are encouraged,
8 from time to time, in the reasonable discretion of the respective
9 governing body, to convene an advisory group, at least one-third
10 of the membership of which shall be representatives designated
11 by publishers as having a substantial volume of transactions with
12 institutions under this section.

13 (j) Nothing in this section shall be construed to require a
14 publisher to produce or deliver an electronic format of instructional
15 material if the publisher offers that instructional material for sale
16 only in a form that is not computer-readable.

17 (k) Nothing in this section shall be construed as vesting any
18 copyright or copyright interest in any captioned format in any
19 person or entity other than the publisher.

20 (l) Nothing in this section shall be construed to authorize any
21 use of instructional materials that would violate the takings clause
22 of the Fifth Amendment to the United States Constitution or would
23 constitute an infringement of copyright under the Copyright
24 Revision Act of 1976, as amended (17 U.S.C. Sec. 101 et seq.).

25 (m) This section exclusively governs requests for captioned
26 formats of instructional materials and Section 67302 does not apply
27 to requests for captioned formats of instructional materials.

28 (n) The provisions of this section shall apply to the University
29 of California, the California State University, and the California
30 Community Colleges only to the extent that the respective
31 institution, by appropriate resolution, makes these provisions
32 applicable.

33 SEC. 51. Section 69458 of the Education Code is amended to
34 read:

35 69458. (a) Participation in the pilot alternative delivery system
36 pursuant to this article is voluntary. Any local agency electing to
37 participate in the pilot alternative delivery system is deemed to
38 have acknowledged and agreed that its participation is voluntary
39 and does not constitute a cost that is reimbursable under Part 7

1 (commencing with Section 17500) of Division 4 of Title 2 of the
2 Government Code.

3 (b) All costs associated with a qualifying institution's election
4 to participate in the pilot alternative delivery system shall be paid
5 by the qualifying institution and, if the qualifying institution is a
6 public institution, shall not require any additional state funds.

7 SEC. 52. Section 69460 of the Education Code is amended to
8 read:

9 69460. (a) On or before January 10, 2012, the Legislative
10 Analyst's Office shall report to the Legislature and the Governor
11 on the implementation and outcomes of the first award cycle under
12 the pilot program. The report shall assess the extent to which the
13 pilot program resulted in improved Cal Grant delivery to students,
14 parents, and high school and financial aid counselors;
15 administrative efficiencies; and sufficient state oversight. The
16 report shall also identify any challenges or barriers to expansion
17 of the alternative Cal Grant delivery system, as well as any
18 associated information technology challenges that may need to be
19 addressed or changes that may be required.

20 (b) Consistent with the criteria in subdivision (a), the Student
21 Aid Commission may provide a report to the Legislature and the
22 Governor.

23 SEC. 53. Section 69613 of the Education Code is amended to
24 read:

25 69613. (a) Program participants shall meet all of the following
26 eligibility criteria prior to selection in the program and shall
27 continue to meet these criteria, as appropriate, during the payment
28 periods:

29 (1) The applicant has completed at least 60 semester units, or
30 the equivalent, and is enrolled in an academic program leading to
31 a baccalaureate degree at an eligible institution, has agreed to
32 participate in a teacher internship program, or has been admitted
33 to a program of professional preparation that has been approved
34 by the Commission on Teacher Credentialing.

35 (2) The applicant is currently enrolled in, or has been admitted
36 to, a program in which he or she will be enrolled on at least a
37 half-time basis, as determined by the participating institution. The
38 applicant shall agree to maintain satisfactory academic progress
39 and a minimum of half-time enrollment, as defined by the
40 participating eligible institution.

1 (A) Except as provided in subparagraphs (B) and (C), if a person
2 participating in the program fails to maintain at least half-time
3 enrollment, as required by this article, under the terms of the
4 agreement pursuant to paragraph (2), the loan assumption
5 agreement shall be invalidated and the participant shall retain full
6 liability for all student loan obligations. This subparagraph shall
7 not apply if the participant is in his or her final semester or quarter
8 in school and has no additional coursework required to obtain his
9 or her teaching credential.

10 (B) Notwithstanding subparagraph (A), if a program participant
11 is unable to maintain at least half-time enrollment due to serious
12 illness, pregnancy, or other natural causes, or is called to active
13 military duty status, the participant is not required to retain full
14 liability for the student loan obligation for a period not to exceed
15 one calendar year, unless approved by the commission for a longer
16 period.

17 (C) If a natural disaster prevents a program participant from
18 maintaining at least half-time enrollment due to the interruption
19 of instruction at the eligible institution, the term of the loan
20 assumption agreement shall be extended for a period not to exceed
21 one calendar year, unless approved by the commission for a longer
22 period.

23 (3) The applicant has been judged by his or her postsecondary
24 institution, school district, or county office of education to have
25 outstanding ability on the basis of criteria that may include, but
26 need not be limited to, any of the following:

27 (A) Grade point average.

28 (B) Test scores.

29 (C) Faculty evaluations.

30 (D) Interviews.

31 (E) Other recommendations.

32 (4) The applicant has received, or is approved to receive, a loan
33 under one or more of the following designated loan programs:

34 (A) The Federal Family Education Loan Program (20 U.S.C.
35 Sec. 1071 et seq.).

36 (B) Any educational loan program approved by the Student Aid
37 Commission.

38 (5) The applicant has agreed to teach full time for at least four
39 consecutive academic years, or on a part-time basis for the
40 equivalent of four full-time academic years, after obtaining a

1 teaching credential in a public elementary or secondary school in
2 this state, in a subject area that is designated as a current or
3 projected shortage area by the Superintendent of Public Instruction,
4 or, on the date the teacher is hired, at an eligible school.

5 (b) An agreement shall remain valid even if the subject area
6 under which an applicant becomes eligible to enter into an
7 agreement ceases to be a designated shortage field by the time the
8 applicant becomes a teacher.

9 (c) For the purposes of calculating eligible years of teaching for
10 the redemption of an award, the inclusion by the Superintendent
11 of Public Instruction of a school on a list prepared pursuant to
12 Section 69613.1 shall apply retroactively from the date the school
13 first opened.

14 (d) A person participating in the program pursuant to this section
15 shall not enter into more than one agreement.

16 (e) A person participating in the program pursuant to this section
17 shall not owe a refund on any state or federal educational grant or
18 have defaulted on any student loan.

19 (f) Notwithstanding any other provision of this section, a
20 credentialed teacher teaching in a public school ranked in the
21 lowest two deciles on the Academic Performance Index pursuant
22 to Section 52052, possesses a clear multiple subject or single
23 subject teaching credential or level II education specialist credential
24 and who has not otherwise participated in the program established
25 by this article, is eligible to enter into an agreement for loan
26 assumption pursuant to this article. The number of loan assumption
27 agreements provided pursuant to this subdivision shall not exceed
28 400 per year. The commission shall develop and adopt regulations
29 for the implementation of this subdivision by January 1, 2010.

30 SEC. 54. Section 69999.14 of the Education Code is amended
31 to read:

32 69999.14. (a) The Legislature finds and declares all of the
33 following:

34 (1) The California National Guard exists to provide a military
35 organization in California with the capability to protect the lives
36 and property of the people of the state during periods of natural
37 disaster and civil disturbances, and to perform other functions
38 required by the Military and Veterans Code or as directed by the
39 Governor.

1 (2) The California National Guard performs an essential public
2 purpose in protecting the health, safety, and property of California's
3 citizens and, in order to fulfill its objectives, it is necessary for the
4 California National Guard to have sufficient human resources to
5 deal with natural or human-caused disasters and emergencies.

6 (3) An educational assistance award program for members of
7 the California National Guard would enhance retention rates within
8 the California National Guard. Similar educational assistance
9 programs have been highly successful in other states and have
10 resulted in substantially higher retention rates.

11 (b) (1) As citizen soldiers, members of the California National
12 Guard represent California's labor force, which is a diverse
13 workforce comprised of skilled and talented workers from all
14 regions of the state. Education assistance awards have the added
15 benefit of improving the skills, competencies, and abilities of the
16 servicemen and servicewomen in the California National Guard
17 who make significant contributions to our economy and are a vital
18 component of the civilian workforce. It is the intent of the
19 Legislature that members of the California National Guard use
20 this education assistance program to enhance the state's highly
21 skilled and highly trained civilian labor force.

22 (2) It is the intent of the Legislature to ensure that the California
23 National Guard has the ability to retain its most competent and
24 capable members, both in the present and in the future. The
25 Legislature recognizes that every member of the California
26 National Guard represents additional federal funding to the State
27 of California annually. Increasing the strength of the California
28 National Guard through higher retention rates would augment the
29 total federal revenue to the state, leading to additional money
30 flowing into the General Fund as tax revenue.

31 (c) It is, therefore, the intent of the Legislature that, in order to
32 fulfill the public program of maintaining required strength in the
33 California National Guard, an inducement be provided to members
34 of the California National Guard by making education assistance
35 awards available to California National Guard members seeking
36 to improve themselves through higher education. It is the intent
37 of the Legislature that these assistance awards be available to
38 California National Guard members who serve the state faithfully.

39 SEC. 55. Section 69999.18 of the Education Code is amended
40 to read:

69999.18. (a) The Student Aid Commission is responsible for issuing awards authorized by Section 69999.16, upon receipt of a certificate from the Adjutant General verifying that the applicant meets the eligibility requirements of this article. The commission shall provide any information to the Military Department that is necessary to meet the reporting requirements of Section 69999.24.

(b) The amount of an award issued pursuant to this article shall be as follows:

(1) For a recipient attending the University of California or the California State University, the maximum amount of the Cal Grant A award, pursuant to Section 66021.2, as adjusted in the annual Budget Act.

(2) For a recipient attending a community college, the maximum amount of the Cal Grant B award, pursuant to Section 66021.2, as adjusted in the annual Budget Act.

(3) For a recipient attending a nonpublic institution, the maximum amount of a Cal Grant A award for a student attending the University of California pursuant to Section 66021.2, as adjusted in the annual Budget Act.

(c) An award used for graduate studies shall not exceed the maximum amount of a Cal Grant A award, as specified in paragraph (1) of subdivision (b), plus five hundred dollars (\$500) for books and supplies.

(d) The award amount under subdivisions (b) and (c) shall not exceed the difference between the recipient's cost of attendance and any other student financial aid and educational benefits pursuant to the federal Montgomery GI Bill (38 U.S.C. Sec. 3001 et seq.) or any other federal educational benefits program for veterans.

(e) California National Guard Education Assistance awards may be renewed for each new academic year, for a maximum of the greater of either (1) four years of full-time equivalent enrollment or (2) the duration for which the qualifying member would otherwise be eligible pursuant to the Cal Grant Program (Chapter 1.7 (commencing with Section 69430)), if the Adjutant General certifies the qualifying member's eligibility and the qualifying member maintains at least a 2.0 cumulative grade point average.

SEC. 56. Section 69999.20 of the Education Code is amended to read:

1 69999.20. Qualifying members shall not receive both a
2 California National Guard Education Assistance award and any
3 Cal Grant award for the same academic year. A qualifying member
4 under this article who is also eligible for a Cal Grant award may
5 elect between an award under this article and any Cal Grant award
6 for the same academic year.

7 SEC. 57. Section 87482 of the Education Code is amended to
8 read:

9 87482. (a) (1) Notwithstanding Section 87480, the governing
10 board of a community college district may employ any qualified
11 individual as a temporary faculty member for a complete school
12 year, but not less than a complete semester or quarter during a
13 school year. The employment of those persons shall be based upon
14 the need for additional faculty during a particular semester or
15 quarter because of the higher enrollment of students during that
16 semester or quarter as compared to the other semester or quarter
17 in the academic year, or because a faculty member has been granted
18 leave for a semester, quarter, or year, or is experiencing long-term
19 illness, and shall be limited, in number of persons so employed,
20 to that need, as determined by the governing board.

21 (2) Employment of a person under this subdivision may be
22 pursuant to contract fixing a salary for the entire semester or
23 quarter.

24 (b) A person, other than a person serving as clinical nursing
25 faculty and exempted from this subdivision pursuant to paragraph
26 (1) of subdivision (c), shall not be employed by any one district
27 under this section for more than two semesters or three quarters
28 within any period of three consecutive years.

29 (c) (1) Notwithstanding subdivision (b), a person serving as
30 full-time clinical nursing faculty or as part-time clinical nursing
31 faculty teaching the hours per week described in Section 87482.5
32 may be employed by any one district under this section for up to
33 four semesters or six quarters within any period of three
34 consecutive academic years between July 1, 2007, and June 30,
35 2014, inclusive.

36 (2) A district that employs faculty pursuant to this subdivision
37 shall provide data to the chancellor's office as to the number of
38 faculty members hired under this subdivision, and what the ratio
39 of full-time to part-time faculty was for each of the three academic
40 years prior to the hiring of faculty under this subdivision and for

1 each academic year for which faculty is hired under this
2 subdivision. This data shall be submitted, in writing, to the
3 chancellor's office on or before June 30, 2012.

4 (3) The chancellor shall report, in writing, to the Legislature
5 and the Governor on or before September 30, 2012, in accordance
6 with data received pursuant to paragraph (2), the number of districts
7 that hired faculty under this subdivision, the number of faculty
8 members hired under this subdivision, and what the ratio of
9 full-time to part-time faculty was for these districts in each of the
10 three academic years prior to the operation of this subdivision and
11 for each academic year for which faculty is hired under this
12 subdivision.

13 (4) A district may not employ a person pursuant to this
14 subdivision if the hiring of that person results in an increase in the
15 ratio of part-time to full-time nursing faculty in that district.

16 SEC. 58. Section 88003.1 of the Education Code is amended
17 to read:

18 88003.1. (a) Notwithstanding any other provision of this
19 chapter, personal services contracting for all services currently or
20 customarily performed by classified school employees to achieve
21 cost savings is permissible, unless otherwise prohibited, when all
22 the following conditions are met:

23 (1) The governing board or contracting agency clearly
24 demonstrates that the proposed contract will result in actual overall
25 cost savings to the community college district, provided that:

26 (A) In comparing costs, there shall be included the community
27 college district's additional cost of providing the same service as
28 proposed by a contractor. These additional costs shall include the
29 salaries and benefits of additional staff that would be needed and
30 the cost of additional space, equipment, and materials needed to
31 perform the function.

32 (B) In comparing costs, there shall not be included the
33 community college district's indirect overhead costs unless these
34 costs can be attributed solely to the function in question and would
35 not exist if that function was not performed by the community
36 college district. Indirect overhead costs shall mean the pro rata
37 share of existing administrative salaries and benefits, rent,
38 equipment costs, utilities, and materials.

39 (C) In comparing costs, there shall be included in the cost of a
40 contractor providing a service any continuing community college

1 district costs that would be directly associated with the contracted
2 function. These continuing community college district costs shall
3 include, but not be limited to, those for inspection, supervision,
4 and monitoring.

5 (2) Proposals to contract out work shall not be approved solely
6 on the basis that savings will result from lower contractor pay rates
7 or benefits. Proposals to contract out work shall be eligible for
8 approval if the contractor's wages are at the industry's level and
9 do not undercut community college district pay rates.

10 (3) The contract does not cause the displacement of community
11 college district employees. The term "displacement" includes
12 layoff, demotion, involuntary transfer to a new classification,
13 involuntary transfer to a new location requiring a change of
14 residence, and time base reductions. Displacement does not include
15 changes in shifts or days off, nor does it include reassignment to
16 other positions within the same classification and general location
17 or employment with the contractor, so long as wages and benefits
18 are comparable to those paid by the school district.

19 (4) The savings shall be large enough to ensure that they will
20 not be eliminated by private sector and community college district
21 cost fluctuations that could normally be expected during the
22 contracting period.

23 (5) The amount of savings clearly justify the size and duration
24 of the contracting agreement.

25 (6) The contract is awarded through a publicized, competitive
26 bidding process.

27 (7) The contract includes specific provisions pertaining to the
28 qualifications of the staff that will perform the work under the
29 contract, as well as assurance that the contractor's hiring practices
30 meet applicable nondiscrimination standards.

31 (8) The potential for future economic risk to the community
32 college district from potential contractor rate increases is minimal.

33 (9) The contract is with a firm. A "firm" means a corporation,
34 limited liability company, partnership, nonprofit organization, or
35 sole proprietorship.

36 (10) The potential economic advantage of contracting is not
37 outweighed by the public's interest in having a particular function
38 performed directly by the community college district.

(b) Notwithstanding any other provision of this chapter, personal services contracting shall also be permissible when any of the following conditions can be met:

(1) The contract is for new community college district functions and the Legislature has specifically mandated or authorized the performance of the work by independent contractors.

(2) The services contracted are not available within community college districts, cannot be performed satisfactorily by community college district employees, or are of such a highly specialized or technical nature that the necessary expert knowledge, experience, and ability are not available through the community college district.

(3) The services are incidental to a contract for the purchase or lease of real or personal property. Contracts under this criterion, known as “service agreements,” shall include, but not be limited to, agreements to service or maintain office equipment or computers that are leased or rented.

(4) The policy, administrative, or legal goals and purposes of the community college district cannot be accomplished through the utilization of persons selected pursuant to the regular or ordinary hiring process. Contracts are permissible under this criterion to protect against a conflict of interest or to ensure independent and unbiased findings in cases where there is a clear need for a different, outside perspective. These contracts shall include, but not be limited to, obtaining expert witnesses in litigation.

(5) The nature of the work is such that the criteria for emergency appointments apply. “Emergency appointment” means an appointment made for a period not to exceed 60 working days either during an actual emergency to prevent the stoppage of public business or because of the limited duration of the work. The method of selection and the qualification standards for an emergency employee shall be determined by the community college district. The frequency of appointment, length of employment, and the circumstances appropriate for the appointment of firms or individuals under emergency appointments shall be restricted so as to prevent the use of emergency appointments to circumvent the regular or ordinary hiring process.

(6) The contractor will provide equipment, materials, facilities, or support services that could not feasibly be provided by the

1 community college district in the location where the services are
2 to be performed.

3 (7) The services are of such an urgent, temporary, or occasional
4 nature that the delay incumbent in their implementation under the
5 community college district's regular or ordinary hiring process
6 would frustrate their very purpose.

7 (c) This section shall apply to all community colleges, including
8 community college districts that have adopted the merit system.

9 (d) This section shall apply to personal service contracts entered
10 into after January 1, 2003. This section shall not apply to the
11 renewal of personal services contracts subsequent to January 1,
12 2003, where the contract was entered into before January 1, 2003,
13 irrespective of whether the contract is renewed or rebid with the
14 existing contractor or with a new contractor.

15 SEC. 59. Section 89267.5 of the Education Code is amended
16 to read:

17 89267.5. (a) As used in this section, "ADN-to-BSN student"
18 means a person who meets all of the following qualifications:

19 (1) The person has earned an associate degree in nursing from
20 a California Community College from a program approved by the
21 Board of Registered Nursing.

22 (2) The person is licensed to work in California as a registered
23 nurse.

24 (3) The person is applying to the California State University to
25 earn a bachelor of science in nursing.

26 (b) Prior to the commencement of the 2012–13 academic year,
27 the Chancellor of the California State University shall implement
28 articulated nursing degree transfer pathways between the California
29 Community Colleges and the California State University. The
30 articulated nursing degree transfer pathways shall, at a minimum,
31 comply with both of the following requirements:

32 (1) A campus of the California State University shall not require
33 an ADN-to-BSN student to complete any duplicative courses for
34 which the content is already required by the Board of Registered
35 Nursing for licensure or that the student has already satisfied by
36 earning the associate degree in nursing and becoming licensed as
37 a registered nurse.

38 (2) A campus of the California State University shall not require
39 an ADN-to-BSN student, who has taken a prerequisite course at
40 a California community college to earn the associate degree in

1 nursing, to take the same prerequisite course or same content from
2 that prerequisite course at the university for the bachelor of science
3 in nursing degree.

4 (c) The Chancellor of the California State University and the
5 Chancellor of the California Community Colleges may appoint
6 representatives from their respective institutions to work
7 collaboratively to provide advice and assistance on either or both
8 of the following:

9 (1) Implementation of the articulated nursing degree transfer
10 pathways.

11 (2) Identification of additional components to be included that
12 are consistent with providing ADN-to-BSN students with a
13 streamlined nursing degree transfer pathway consistent with the
14 finding in subdivision (g) of Section 1 of Chapter 283 of the
15 Statutes of 2009.

16 (d) By March 15, 2011, the Legislative Analyst's Office shall
17 prepare and submit to the Legislature and the Governor a report
18 on the status of plans to implement articulated nursing degree
19 transfer pathways between the California Community Colleges
20 and the California State University. This report may be part of its
21 annual budget report to the Legislature.

22 SEC. 60. Section 354.5 of the Elections Code is amended to
23 read:

24 354.5. (a) "Signature" includes either of the following:

25 (1) A person's mark if the name of the person affixing the mark
26 is written near the mark by a witness over 18 years of age
27 designated by the person and the designee subscribes his or her
28 own name as a witness thereto. For purposes of this paragraph, a
29 signature stamp may be used as a mark, provided that the
30 authorized user complies with the provisions of this paragraph.

31 (2) An impression made by the use of a signature stamp pursuant
32 to the requirements specified in subdivision (c).

33 (b) A mark attested as provided in paragraph (1) of subdivision
34 (a), or an impression made by a signature stamp as provided in
35 paragraph (2) of subdivision (a), may serve as a signature for any
36 purpose specified in this code, including a sworn statement.

37 (c) An authorized user of a signature stamp may use it to affix
38 a signature to a document or writing any time that a signature is
39 required by this code, provided that all of the following conditions,
40 as applicable, are met:

1 (1) A signature stamp used to obtain a ballot or vote by mail
2 ballot in any local, state, or federal election shall be used only by
3 the authorized user of that signature stamp.

4 (2) A signature stamp shall be affixed by the authorized user in
5 the presence of the Secretary of State, his or her designee, the local
6 elections official, or his or her designee, to obtain a ballot, in any
7 local, state, or federal election unless the authorized user of the
8 signature stamp votes by vote by mail ballot. If the owner of a
9 signature stamp votes by vote by mail ballot, he or she shall affix
10 the signature stamp on the identification envelope in accordance
11 with the requirements of Section 3019.

12 (d) A signature affixed with a signature stamp by an authorized
13 user in accordance with the requirements of this section shall be
14 treated in the same manner as a signature made in writing.

15 (e) A registered voter or any person who is eligible to vote, who
16 qualifies as an authorized user pursuant to paragraph (1) of
17 subdivision (g), may use a signature stamp only after he or she
18 first submits his or her affidavit of registration or a new affidavit
19 of registration, whichever is applicable, in the presence of a county
20 elections official, using the signature stamp to sign the affidavit.

21 (f) The Secretary of State shall report to the Legislature not later
22 than January 1, 2009, regarding the use of signature stamps during
23 the 2008 elections.

24 (g) The following definitions apply for purposes of this section:

25 (1) "Authorized user" means either of the following:

26 (A) A person with a disability who, by reason of that disability,
27 is unable to write and who owns a signature stamp.

28 (B) A person using the signature stamp on behalf of the owner
29 of the stamp with the owner's express consent and in the presence
30 of the owner.

31 (2) "Disability" means a medical condition, mental disability,
32 or physical disability, as those terms are defined in subdivisions
33 (h), (i), and (k) of Section 12926 of the Government Code.

34 (3) "Signature stamp" means a stamp that contains the
35 impression of any of the following:

36 (A) The actual signature of a person with a disability.

37 (B) A mark or symbol that is adopted by the person with the
38 disability.

1 (C) A signature of the name of a person with a disability that is
2 made by another person and is adopted by the person with the
3 disability.

4 SEC. 60.3. Section 2157 of the Elections Code is amended to
5 read:

6 2157. (a) Subject to this chapter, the affidavit of registration
7 shall be in a form prescribed by regulations adopted by the
8 Secretary of State. The affidavit shall:

9 (1) Contain the information prescribed in Section 2150.

10 (2) Be sufficiently uniform among the separate counties to allow
11 for the processing and use by one county of an affidavit completed
12 in another county.

13 (3) Allow for the inclusion of informational language to meet
14 the specific needs of that county, including, but not limited to, the
15 return address of the elections official in that county, and a
16 telephone number at which a voter can obtain elections information
17 in that county.

18 (4) Be included on one portion of a multipart card, to be known
19 as a voter registration card, the other portions of which shall include
20 information sufficient to facilitate completion and mailing of the
21 affidavit. The affidavit portion of the multipart card shall be
22 numbered according to regulations adopted by the Secretary of
23 State. For purposes of facilitating the distribution of voter
24 registration cards as provided in Section 2158, there shall be
25 attached to the affidavit portion a receipt. The receipt shall be
26 separated from the body of the affidavit by a perforated line.

27 (5) Contain, in a type size and color of ink that is clearly
28 distinguishable from surrounding text, a statement identical or
29 substantially similar to the following:

30 “Certain voters facing life-threatening situations may qualify
31 for confidential voter status. For more information, please contact
32 the Secretary of State’s Safe At Home program or visit the
33 Secretary of State’s Web site.”

34 (6) Contain, in a type size and color of ink that is clearly
35 distinguishable from surrounding text, a statement that the use of
36 voter registration information for commercial purposes is a
37 misdemeanor pursuant to subdivision (a) of Section 2194, and any
38 suspected misuse shall be reported to the Secretary of State.

39 (7) Contain a toll-free fraud hotline telephone number
40 maintained by the Secretary of State that the public may use to

1 report suspected fraudulent activity concerning misuse of voter
2 registration information.

3 (8) Be returnable to the county elections official as a
4 self-enclosed mailer with postage prepaid by the Secretary of State.

5 (b) Nothing contained in this division shall prevent the use of
6 voter registration cards and affidavits of registration in existence
7 on the effective date of this section and produced pursuant to
8 regulations of the Secretary of State, and all references to voter
9 registration cards and affidavits in this division shall be applied to
10 the existing voter registration cards and affidavits of registration.

11 (c) The Secretary of State may continue to supply existing
12 affidavits of registration prior to printing new or revised forms
13 that reflect the changes required pursuant to this section, Section
14 2150, or Section 2160.

15 SEC. 60.5. Section 2157.2 of the Elections Code is amended
16 to read:

17 2157.2. In order that a voter be fully informed of the
18 permissible uses of personal information supplied by him or her
19 for the purpose of completing a voter registration affidavit, local
20 elections officials shall post on any local elections official's
21 Internet Web site relating to voter information, and the Secretary
22 of State shall print in the state ballot pamphlet and post on his or
23 her Internet Web site, a statement identical or substantially similar
24 to the following:

25 "Information on your voter registration affidavit will be used by
26 elections officials to send you official information on the voting
27 process, such as the location of your polling place and the issues
28 and candidates that will appear on the ballot. Commercial use of
29 voter registration information is prohibited by law and is a
30 misdemeanor. Voter information may be provided to a candidate
31 for office, a ballot measure committee, or other persons for election,
32 scholarly, journalistic, political, or governmental purposes, as
33 determined by the Secretary of State. Driver's license and social
34 security numbers, or your signature as shown on your voter
35 registration card, cannot be released for these purposes. If you
36 have any questions about the use of voter information or wish to
37 report suspected misuse of such information, please call the
38 Secretary of State's Voter Protection and Assistance Hotline.

39 "Certain voters facing life-threatening situations may qualify
40 for confidential voter status. For more information, please contact

1 the Secretary of State's Safe At Home program or visit the
2 Secretary of State's Web site."

3 SEC. 61. Section 2225 of the Elections Code is amended to
4 read:

5 2225. (a) Based on change-of-address data received from the
6 United States Postal Service or its licensees, the county elections
7 official shall send a forwardable notice, including a postage-paid
8 and preaddressed return form, to enable the voter to verify or
9 correct address information.

10 Notification received through NCOA or Operation Mail that a
11 voter has moved and has given no forwarding address shall not
12 require the mailing of a forwardable notice to that voter.

13 (b) If change-of-address data indicates that the voter has moved
14 to a new residence address in the same county, the forwardable
15 notice shall be in substantially the following form:

16
17 "We have received notification that the voter has moved to a
18 new residence address in ____ County. You will be registered to
19 vote at your new address unless you notify our office within 15
20 days that the address to which this card was mailed is not a change
21 of your permanent residence. You must notify our office by either
22 returning the attached postage-paid postcard, or by calling toll
23 free. If this is not a permanent residence, and if you do not notify
24 us within 15 days, you may be required to provide proof of your
25 residence address in order to vote at future elections."

26
27 (c) If change-of-address data indicates that the voter has moved
28 to a new address in another county, the forwardable notice shall
29 be in substantially the following form:

30
31 "We have received notification that you have moved to a new
32 address not in ____ County. Please use the attached postage-paid
33 postcard to: (1) advise us if this is or is not a permanent change of
34 residence address, or (2) to advise us if our information is incorrect.
35 If you do not return this card within 15 days and continue to reside
36 in ____ County, you may be required to provide proof of your
37 residence address in order to vote at future elections and, if you
38 do not offer to vote at any election in the period between the date
39 of this notice and the second federal general election following
40 this notice, your voter registration will be cancelled and you will

1 have to reregister in order to vote. If you no longer live in ____
 2 County, you must reregister at your new residence address in order
 3 to vote in the next election. California residents may obtain a mail
 4 registration form by calling the county elections officer or
 5 1-800-345-VOTE.”

6
 7 (d) If postal service change-of-address data received from a
 8 nonforwardable mailing indicates that a voter has moved and left
 9 no forwarding address, a forwardable notice shall be sent in
 10 substantially the following form:

11
 12 “We are attempting to verify postal notification that the voter to
 13 whom this card is addressed has moved and left no forwarding
 14 address. If the person receiving this card is the addressed voter,
 15 please confirm your continued residence or provide current
 16 residence information on the attached postage-paid postcard within
 17 15 days. If you do not return this card and continue to reside in
 18 ____ County, you may be required to provide proof of your
 19 residence address in order to vote at future elections and, if you
 20 do not offer to vote at any election in the period between the date
 21 of this notice and the second federal general election following
 22 this notice, your voter registration will be cancelled and you will
 23 have to reregister in order to vote. If you no longer live in ____
 24 County, you must reregister at your new residence address in order
 25 to vote in the next election. California residents may obtain a mail
 26 registration form by calling the county elections office or the
 27 Secretary of State’s Office.”

28
 29 (e) The use of a toll-free number to confirm the old residence
 30 address is optional. Any change to the voter address must be
 31 received in writing.

32 SEC. 62. Section 11100 of the Elections Code is amended to
 33 read:

34 11100. (a) This chapter applies only to the recall of state
 35 officers.

36 (b) In addition to this chapter, Sections 13 to 18, inclusive, of
 37 Article II of the California Constitution and the applicable
 38 provisions of Chapter 1 (commencing with Section 11000) and
 39 Chapter 4 (commencing with Section 11300) shall govern the
 40 recall of state officers.

1 SEC. 63. Section 13307 of the Elections Code is amended to
2 read:

3 13307. (a) (1) Each candidate for nonpartisan elective office
4 in any local agency, including any city, county, city and county,
5 or district, may prepare a candidate's statement on an appropriate
6 form provided by the elections official. The statement may include
7 the name, age, and occupation of the candidate and a brief
8 description, of no more than 200 words, of the candidate's
9 education and qualifications expressed by the candidate himself
10 or herself. However, the governing body of the local agency may
11 authorize an increase in the limitations on words for the statement
12 from 200 to 400 words. The statement shall not include the party
13 affiliation of the candidate, nor membership or activity in partisan
14 political organizations.

15 (2) The statement authorized by this subdivision shall be filed
16 in the office of the elections official when the candidate's
17 nomination papers are returned for filing, if it is for a primary
18 election, or for an election for offices for which there is no primary.
19 The statement shall be filed in the office of the elections official
20 no later than the 88th day before the election, if it is for an election
21 for which nomination papers are not required to be filed. If a runoff
22 election or general election occurs within 88 days of the primary
23 or first election, the statement shall be filed with the elections
24 official by the third day following the governing body's declaration
25 of the results from the primary or first election.

26 (3) Except as provided in Section 13309, the statement may be
27 withdrawn, but not changed, during the period for filing nomination
28 papers and until 5 p.m. of the next working day after the close of
29 the nomination period.

30 (b) The elections official shall send to each voter, together with
31 the sample ballot, a voter's pamphlet which contains the written
32 statements of each candidate that is prepared pursuant to this
33 section. The statement of each candidate shall be printed in type
34 of uniform size and darkness, and with uniform spacing. The
35 elections official shall provide a Spanish translation to those
36 candidates who wish to have one, and shall select a person to
37 provide that translation from the list of approved Spanish language
38 translators and interpreters of the superior court of the county or
39 from an institution accredited by the Western Association of
40 Schools and Colleges.

1 (c) The local agency may estimate the total cost of printing,
2 handling, translating, and mailing the candidate's statements filed
3 pursuant to this section, including costs incurred as a result of
4 complying with the federal Voting Rights Act of 1965, as amended.
5 The local agency may require each candidate filing a statement to
6 pay in advance to the local agency his or her estimated pro rata
7 share as a condition of having his or her statement included in the
8 voter's pamphlet. In the event the estimated payment is required,
9 the receipt for the payment shall include a written notice that the
10 estimate is just an approximation of the actual cost that varies from
11 one election to another election and may be significantly more or
12 less than the estimate, depending on the actual number of
13 candidates filing statements. Accordingly, the local agency is not
14 bound by the estimate and may, on a pro rata basis, bill the
15 candidate for additional actual expense or refund any excess paid
16 depending on the final actual cost. In the event of underpayment,
17 the local agency may require the candidate to pay the balance of
18 the cost incurred. In the event of overpayment, the local agency
19 which, or the elections official who, collected the estimated cost
20 shall prorate the excess amount among the candidates and refund
21 the excess amount paid within 30 days of the election.

22 (d) Nothing in this section shall be deemed to make any
23 statement, or the authors thereof, free or exempt from any civil or
24 criminal action or penalty because of any false, slanderous, or
25 libelous statements offered for printing or contained in the voter's
26 pamphlet.

27 (e) Before the nominating period opens, the local agency for
28 that election shall determine whether a charge shall be levied
29 against that candidate for the candidate's statement sent to each
30 voter. This decision shall not be revoked or modified after the
31 seventh day prior to the opening of the nominating period. A
32 written statement of the regulations with respect to charges for
33 handling, packaging, and mailing shall be provided to each
34 candidate or his or her representative at the time he or she picks
35 up the nomination papers.

36 (f) For purposes of this section and Section 13310, the board of
37 supervisors shall be deemed the governing body of judicial
38 elections.

39 SEC. 64. Section 1118 of the Evidence Code is amended to
40 read:

1 1118. An oral agreement “in accordance with Section 1118”
2 means an oral agreement that satisfies all of the following
3 conditions:

4 (a) The oral agreement is recorded by a court reporter or reliable
5 means of audio recording.

6 (b) The terms of the oral agreement are recited on the record in
7 the presence of the parties and the mediator, and the parties express
8 on the record that they agree to the terms recited.

9 (c) The parties to the oral agreement expressly state on the
10 record that the agreement is enforceable or binding, or words to
11 that effect.

12 (d) The recording is reduced to writing and the writing is signed
13 by the parties within 72 hours after it is recorded.

14 SEC. 65. Section 7572 of the Family Code is amended to read:

15 7572. (a) The Department of Child Support Services, in
16 consultation with the State Department of Health Care Services,
17 the California Association of Hospitals and Health Systems, and
18 other affected health provider organizations, shall work
19 cooperatively to develop written materials to assist providers and
20 parents in complying with this chapter. This written material shall
21 be updated periodically by the Department of Child Support
22 Services to reflect changes in law, procedures, or public need.

23 (b) The written materials for parents which shall be attached to
24 the form specified in Section 7574 and provided to unmarried
25 parents shall contain the following information:

26 (1) A signed voluntary declaration of paternity that is filed with
27 the Department of Child Support Services legally establishes
28 paternity.

29 (2) The legal rights and obligations of both parents and the child
30 that result from the establishment of paternity.

31 (3) An alleged father’s constitutional rights to have the issue of
32 paternity decided by a court; to notice of any hearing on the issue
33 of paternity; to have an opportunity to present his case to the court,
34 including his right to present and cross-examine witnesses; to have
35 an attorney represent him; and to have an attorney appointed to
36 represent him if he cannot afford one in a paternity action filed by
37 a local child support agency.

38 (4) That by signing the voluntary declaration of paternity, the
39 father is voluntarily waiving his constitutional rights.

1 (c) Parents shall also be given oral notice of the rights and
2 responsibilities specified in subdivision (b). Oral notice may be
3 accomplished through the use of audio or video recorded programs
4 developed by the Department of Child Support Services to the
5 extent permitted by federal law.

6 (d) The Department of Child Support Services shall, free of
7 charge, make available to hospitals, clinics, and other places of
8 birth any and all informational and training materials for the
9 program under this chapter, as well as the paternity declaration
10 form. The Department of Child Support Services shall make
11 training available to every participating hospital, clinic, local
12 registrar of births and deaths, and other place of birth no later than
13 June 30, 1999.

14 (e) The Department of Child Support Services may adopt
15 regulations, including emergency regulations, necessary to
16 implement this chapter.

17 SEC. 66. Section 2089.12 of the Fish and Game Code is
18 amended to read:

19 2089.12. (a) Unless the department determines that it is
20 inappropriate to do so based on the nature of the management
21 actions being proposed, the species listed in the permit, or other
22 factors, the agreement shall require that the landowner provide the
23 department with at least 60 days' advance notice of any of the
24 following:

25 (1) Any incidental take that is anticipated to occur under the
26 agreement.

27 (2) The landowner's plan to return to baseline at the end of the
28 agreement.

29 (3) Any plan to transfer or alienate the landowner's interest in
30 the land or water.

31 (b) (1) If the department receives any notice described in
32 subdivision (a), the landowner shall provide the department, its
33 contractors, or agents with access to the land or water for purposes
34 of safely removing or salvaging the species.

35 (2) The department shall provide notice to the landowner at
36 least seven days prior to accessing the land or water for the
37 purposes of paragraph (1). The notice shall identify each person
38 selected by the department, its contractors, or agents to access the
39 land or water.

(3) Notwithstanding paragraph (1), during the seven-day notice period, a landowner may object, in writing, to a person selected to access the land or water. If a landowner objects, another person shall be selected by the department, its contractors, or agents, and notification shall be provided to the landowner pursuant to paragraph (2). However, if a landowner objects to a selection on two successive occasions, the landowner shall be deemed to consent to access to the land or water by a person selected by the department, its contractors, or agents. Failure by a landowner to object to the selection within the seven-day notice period shall be deemed consent to access the land or water by a person selected by the department, its contractors, or agents.

(4) If the landowner objects to a person selected to access the land or water pursuant to paragraph (3), the 60-day notice period described in subdivision (a) shall be tolled for the period between the landowner's objection to a person selected for access to the land or water and the landowner's consent to a person selected for access to the land or water.

SEC. 67. Section 2089.23 of the Fish and Game Code is amended to read:

2089.23. (a) A landowner that owns land that abuts a property enrolled in a state safe harbor agreement shall not be required, for purposes of an incidental take permit, to undertake the management activities set forth in the state safe harbor agreement, if all of the following conditions are met:

(1) The neighboring landowner allows the department to determine baseline conditions on the property.

(2) The neighboring landowner agrees to maintain the baseline conditions for the duration specified in the safe harbor agreement.

(3) The department determines that allowing the neighboring landowner to receive an incidental take permit for the abutting property does not undermine the net conservation benefit determination made by the department in the approval of the safe harbor agreement.

(4) The take authorized by the department will not jeopardize the continued existence of the species. This determination shall be made in accordance with subdivision (c) of Section 2081.

(b) (1) Unless the department determines that it is inappropriate to do so based on the species listed in the permit, or any other

1 factors, the neighboring landowner shall provide the department
2 with at least 60 days' advance notice of any of the following:

3 (A) Any incidental take that is anticipated to occur under the
4 permit.

5 (B) The neighboring landowner's plan to return to baseline
6 conditions.

7 (C) Any plan to transfer or alienate the neighboring landowner's
8 interest in the land or water.

9 (2) (A) If the department receives any notice described in
10 paragraph (1), the neighboring landowner shall provide the
11 department, its contractors, or agents with access to the land or
12 water for purposes of safely removing or salvaging the species.

13 (B) The department shall provide notice to the neighboring
14 landowner at least seven days before accessing the land or water
15 for the purposes of subparagraph (A). The notice shall identify
16 each person selected by the department, its contractors, or agents
17 to access the land or water.

18 (C) Notwithstanding subparagraph (B), during the seven-day
19 notice period, the neighboring landowner may object, in writing,
20 to a person selected to access the land or water. If the neighboring
21 landowner objects, another person shall be selected by the
22 department, its contractors, or agents, and notification shall be
23 provided to the neighboring landowner pursuant to subparagraph
24 (B). However, if the neighboring landowner objects to a selection
25 on two successive occasions, the neighboring landowner shall be
26 deemed to consent to access to the land or water by a person
27 selected by the department, its contractors, or agents. Failure by
28 the neighboring landowner to object to the selection within the
29 seven-day notice period shall be deemed consent to access the land
30 or water by the person selected by the department, its contractors,
31 or agents.

32 SEC. 68. Section 5655 of the Fish and Game Code is amended
33 to read:

34 5655. (a) In addition to the responsibilities imposed pursuant
35 to Section 5651, the department may clean up or abate, or cause
36 to be cleaned up or abated, the effects of any petroleum or
37 petroleum product deposited or discharged in the waters of this
38 state or deposited or discharged in any location onshore or offshore
39 where the petroleum or petroleum product is likely to enter the
40 waters of this state, order any person responsible for the deposit

1 or discharge to clean up the petroleum or petroleum product or
2 abate the effects of the deposit or discharge, and recover any costs
3 incurred as a result of the cleanup or abatement from the
4 responsible party.

5 (b) An order shall not be issued pursuant to this section for the
6 cleanup or abatement of petroleum products in any sump, pond,
7 pit, or lagoon used in conjunction with crude oil production that
8 is in compliance with all applicable state and federal laws and
9 regulations.

10 (c) The department may issue an order pursuant to this section
11 only if there is an imminent and substantial endangerment to human
12 health or the environment and the order shall remain in effect only
13 until any cleanup and abatement order is issued pursuant to Section
14 13304 of the Water Code. A regional water quality control board
15 shall incorporate the department's order into the cleanup and
16 abatement order issued pursuant to Section 13304 of the Water
17 Code, unless the department's order is inconsistent with any more
18 stringent requirement established in the cleanup and abatement
19 order. Any action taken in compliance with the department's order
20 is not a violation of any subsequent regional water quality control
21 board cleanup and abatement order issued pursuant to Section
22 13304 of the Water Code.

23 (d) The Administrator of the Office of Spill Prevention and
24 Response has the primary authority to serve as a state incident
25 commander and direct removal, abatement, response, containment,
26 and cleanup efforts with regard to all aspects of any placement of
27 petroleum or a petroleum product in the waters of the state, except
28 as otherwise provided by law. This authority may be delegated.

29 (e) For purposes of this section, the following definitions apply:

30 (1) "Petroleum product" means oil of any kind or form,
31 including, but not limited to, fuel oil, sludge, oil refuse, and oil
32 mixed with waste other than dredged spoil. "Petroleum product"
33 does not include any pesticide that has been applied for agricultural,
34 commercial, or industrial purposes or that has been applied in
35 accordance with a cooperative agreement authorized by Section
36 116180 of the Health and Safety Code, that has not been discharged
37 accidentally or for purposes of disposal, and the application of
38 which was in compliance with all applicable state and federal laws
39 and regulations.

(2) “State incident commander” means a person with the overall authority for managing and conducting incident operations during an oil spill response, who shall manage an incident consistent with the standardized emergency management system required by Section 8607 of the Government Code. Incident management generally includes the development of objectives, strategies, and tactics, ordering and release of resources, and coordinating with other appropriate response agencies to ensure that all appropriate resources are properly utilized and that this coordinating function is performed in a manner designed to minimize risk to other persons and to the environment.

SEC. 69. Section 9011 of the Fish and Game Code is amended to read:

9011. (a) (1) Subject to Article 6 (commencing with Section 8275) of Chapter 2, Dungeness crab, as defined in Section 8275, may be taken with Dungeness crab traps.

(2) A Dungeness crab trap may have any number of openings of any size. However, every Dungeness crab trap shall have at least two rigid circular openings of not less than 4 $\frac{1}{4}$ inches, inside diameter, on the top or side of the trap. If both of the openings are located on the side of the trap, at least one of the openings shall be located so that at least one-half of the opening is in the upper half of the trap.

(3) Subject to Article 6 (commencing with Section 8275) of Chapter 2, rock crab may be taken incidentally with a Dungeness crab trap used pursuant to this subdivision to take Dungeness crab, provided that the incidental taking occurs only during the season when it is lawful to take both species. A rock crab, taken incidentally with a Dungeness crab trap, that does not comply with Article 6 (commencing with Section 8275) of Chapter 2, shall be immediately returned to the waters from which it was taken.

(b) (1) Subject to Article 6 (commencing with Section 8275) of Chapter 2, rock crab, as defined in Section 8275, may be taken with rock crab traps.

(2) A rock crab trap may have any number of openings of any size. However, a rock crab trap constructed of wire mesh with an inside mesh measurement of not less than 1 $\frac{7}{8}$ inches by 3 $\frac{7}{8}$ inches, with the 3 $\frac{7}{8}$ inch measurement parallel to the floor, shall have at least one rigid circular opening of not less than 3 $\frac{1}{4}$ inches, inside diameter, located on any outside wall of the rearmost chamber of

1 the crab trap and shall be located so that at least one-half of the
2 opening is in the upper half of the trap. Rock crab traps constructed
3 of other material shall have at least two rigid circular openings of
4 not less than $3\frac{1}{4}$ inches, inside diameter, on the top or side of the
5 rearmost chamber of the trap. If both of the openings are located
6 on the side of the trap, at least one of the openings shall be located
7 so that at least one-half of the opening is in the upper half of the
8 trap. No rigid circular opening, as required, shall extend more than
9 $\frac{1}{2}$ inch beyond the plane of the wall side or top of the trap in which
10 it is located, and it shall be clearly accessible to any crab which
11 may be in the trap.

12 (3) Subject to Article 6 (commencing with Section 8275) of
13 Chapter 2, Dungeness crab may be taken incidentally with a rock
14 crab trap used pursuant to this subdivision to take rock crab,
15 provided that the incidental taking occurs only during the season
16 when it is lawful to take both species. A Dungeness crab, taken
17 incidentally with a rock crab trap, that does not comply with Article
18 6 (commencing with Section 8275) of Chapter 2, shall be
19 immediately returned to the waters from which it was taken.

20 (4) A person shall not possess any lobster aboard a vessel while
21 the vessel is being used pursuant to this subdivision to take rock
22 crab.

23 (c) On or before January 1, 2013, the department shall report
24 to the appropriate policy and fiscal committees of the Legislature
25 the impacts, if any, of the changes made to this section by Chapter
26 478 of the Statutes of 2009. The report shall include information
27 about citations issued pursuant to this section relating to both rock
28 crab and Dungeness crab for the years 2010 to 2012, inclusive.

29 SEC. 70. Section 12013 of the Fish and Game Code is amended
30 to read:

31 12013. (a) Any person who illegally takes or possesses in the
32 field more than three times the daily bag limit, or who illegally
33 possesses more than three times the legal possession limit, of fish,
34 reptiles, birds, amphibians, or mammals is guilty of a misdemeanor
35 and shall be subject to a fine of not less than five thousand dollars
36 (\$5,000), nor more than forty thousand dollars (\$40,000), or
37 imprisonment in a county jail for not more than one year, or by
38 both that fine and imprisonment.

39 (b) If a person is convicted of a second or subsequent violation
40 of subdivision (a), that person shall be punished by a fine of not

1 less than ten thousand dollars (\$10,000), nor more than fifty
2 thousand dollars (\$50,000), or imprisonment in a county jail for
3 not more than one year, or by both that fine and imprisonment.

4 (c) Any person who maliciously and intentionally maims,
5 mutilates, or physically tortures any fish, reptile, bird, amphibian,
6 or mammal provided for in this code is guilty of a crime punishable
7 in accordance with subdivision (a). Nothing in this subdivision
8 affects any legal activity pursuant to this code, including, but not
9 limited to, hunting, fishing, trapping, hunting dog training, hunting
10 dog field trials, predation control, and efforts to dispatch a wounded
11 mammal, bird, or fish taken legally.

12 (d) Nothing in this section prohibits a person from giving,
13 receiving, or possessing the legal possession limit of lawfully taken
14 fish, reptiles, birds, amphibians, or mammals.

15 (e) Nothing in this section prohibits a person from giving,
16 receiving, or possessing, at the personal abode of the donor or
17 donee, lawfully taken migratory game birds that are not required
18 to be tagged pursuant to the federal Migratory Bird Treaty Act (16
19 U.S.C. Sec. 703 et seq.) or regulations adopted pursuant to that
20 act.

21 (f) This section does not supersede Section 12005, 12006.6, or
22 12009.

23 (g) Moneys equivalent to 50 percent of the revenue from any
24 fine collected pursuant to this section shall be paid to the county
25 in which the offense was committed, pursuant to Section 13003.
26 The board of supervisors shall first use revenues pursuant to this
27 subdivision to reimburse the costs incurred by the district attorney
28 or city attorney in investigating and prosecuting the violation. Any
29 excess revenues may be expended in accordance with Section
30 13103.

31 SEC. 71. Section 3884.2 of the Food and Agricultural Code is
32 amended to read:

33 3884.2. (a) The District 32a Disposition Fund is hereby created
34 in the State Treasury.

35 (b) The Department of General Services may sell all or any
36 portion of the real property that composes District 32a. District
37 32a shall not enter into any contract, lease, or other agreement
38 affecting the use or operation of the real property for a period that
39 exceeds three months, and all of these contracts, leases, or other
40 agreements shall contain a provision that they may be canceled

1 upon a 30-day notice from the Department of General Services.
2 The Department of General Services shall be reimbursed for any
3 reasonable cost or expense incurred for the transactions described
4 in this section. Additionally, to the extent bonds issued by the State
5 Public Works Board or other entity involve the property to be sold
6 pursuant to this section, all issuer- and trustee-related costs
7 associated with the review of any proposed sale, together with the
8 costs related to the defeasance or retirement of any bonds, which
9 may include the cost of nationally recognized bond counsel, shall
10 be paid from the proceeds of any sale or lease authorized by this
11 section. The net proceeds from the sale shall be deposited into the
12 District 32a Disposition Fund.

13 (c) The sale of the real property authorized by this section shall
14 be pursuant to a public bidding process designed to obtain the
15 highest, most certain return for the state from a responsible bidder,
16 and any transaction based on such a bidding process shall be
17 deemed to be the fair market value for the property. A notice of
18 this bidding process shall be posted by the Department of General
19 Services on its Internet Web site for at least 30 days prior to the
20 sale of the real property. The provisions of Section 11011.1 of the
21 Government Code are not applicable to the sale of real property
22 authorized under this section.

23 (d) Thirty days prior to executing a transaction for a sale of real
24 property authorized by this section, the Director of General
25 Services shall report to the chairpersons of the fiscal committees
26 of the Legislature all of the following:

27 (1) The financial terms of the transaction.

28 (2) A comparison of fair market value for the real property and
29 the terms listed in paragraph (1).

30 (3) Any basis for agreeing to terms and conditions other than
31 fair market value.

32 (e) As to the real property sold pursuant to this section, the
33 Director of General Services shall except and reserve to the state
34 all mineral deposits, as defined in Section 6407 of the Public
35 Resources Code, together with the right to prospect for, mine, and
36 remove the deposits. If, however, the Director of General Services
37 determines that there is little or no potential for mineral deposits,
38 the reservation may be without surface right of entry above a depth
39 of 500 feet, or the rights to prospect for, mine, and remove the
40 deposits shall be limited to those areas of the real property

1 conveyed that the director determines to be reasonably necessary
2 for the removal of the deposits.

3 (f) The Department of General Services shall report to the
4 Legislature on or before June 30 of each year on the status of the
5 sale of real property authorized by this section.

6 (g) Upon the sale of all property that composes District 32a,
7 District 32a shall be abolished and all funds in the District 32a
8 Disposition Fund shall be transferred to the General Fund.

9 (h) (1) The disposition of state real property or buildings
10 specified in subdivision (b) that are made on an “as is” basis shall
11 be exempt from Chapter 3 (commencing with Section 21100) to
12 Chapter 6 (commencing with Section 21165), inclusive, of Division
13 13 of the Public Resources Code. Upon title to the parcel vesting
14 in the purchaser or transferee of the property, the purchaser or
15 transferee shall be subject to any local governmental land use
16 entitlement approval requirements and to Chapter 3 (commencing
17 with Section 21100) to Chapter 6 (commencing with Section
18 21165), inclusive, of Division 13 of the Public Resources Code.

19 (2) If the disposition of state real property or buildings specified
20 in subdivision (b) is not made on an “as is” basis and close of
21 escrow is contingent on the satisfaction of a local governmental
22 land use entitlement approval requirement or compliance by the
23 local government with Chapter 3 (commencing with Section 21100)
24 to Chapter 6 (commencing with Section 21165), inclusive, of
25 Division 13 of the Public Resources Code, the execution of the
26 purchase and sale agreement or of the exchange agreement by all
27 parties to the agreement shall be exempt from Chapter 3
28 (commencing with Section 21100) to Chapter 6 (commencing with
29 Section 21165), inclusive, of Division 13 of the Public Resources
30 Code.

31 (3) For the purposes of this subdivision, “disposition” means
32 the sale, lease, or repurchase of state property or buildings specified
33 in subdivision (b).

34 (i) The disposition of real property or buildings, or both,
35 pursuant to this section does not constitute a sale or other
36 disposition of state surplus property within the meaning of Section
37 9 of Article III of the California Constitution and shall not be
38 subject to subdivision (g) of Section 11011 of the Government
39 Code.

1 SEC. 72. Section 5931 of the Food and Agricultural Code is
2 amended to read:

3 5931. In the event the committee and the citrus pest control
4 districts do not agree on the terms of the memorandum of
5 understanding as prescribed in Section 5930, the citrus pest control
6 districts shall conduct an election to determine which entity shall
7 provide funding for the citrus tristeza virus effective plan. The
8 ballot shall ask landowners within the citrus pest control districts
9 to select either (1) the California Citrus Pest and Disease Prevention
10 Committee and the Department of Food and Agriculture through
11 the Citrus Disease Management Account to fund the citrus tristeza
12 virus effective plan or (2) the citrus pest control districts as the
13 funding entity of the citrus tristeza virus effective plan.

14 SEC. 73. Section 6047.12 of the Food and Agricultural Code
15 is amended to read:

16 6047.12. (a) Expenditures charged by the department and the
17 board for administrative purposes shall not exceed a total of 14
18 percent of the assessments collected pursuant to this article.
19 Administrative purposes shall include, but not be limited to, all
20 auditing expenses and all costs and attorney's fees resulting from,
21 or relating to, litigation involving this article against the
22 department, or the board and its members and agents, and expenses
23 associated with Section 6047.4 and paragraphs (1) and (2) of
24 subdivision (a) of Section 6047.5.

25 (b) Notwithstanding subdivision (a), the Joint Legislative Audit
26 Committee and the State Auditor shall maintain independent
27 authority to audit the expenditure of industry assessments.

28 SEC. 74. Section 15061 of the Food and Agricultural Code,
29 as amended by Section 2 of Chapter 245 of the Statutes of 2009,
30 is amended to read:

31 15061. (a) An inspection tonnage tax at the maximum rate of
32 fifteen cents (\$0.15) per ton of commercial feed sold, except whole
33 grains, and whole hays when unmixed, shall be paid to the secretary
34 by any person who distributes commercial feed to a
35 consumer-buyer in this state. The distributor shall also pay an
36 inspection tonnage tax for purchased commercial feed fed to his
37 or her own animals.

38 (b) The secretary may, based upon a finding and
39 recommendation of the Feed Inspection Advisory Board, determine
40 the specific rate necessary to provide the revenue needed to carry

out the provisions of this chapter. The secretary and the Feed Inspection Advisory Board shall not exceed the maximum tonnage rate established by this section. Setting the tonnage tax rate shall not be subject to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) The secretary may, based upon a finding and recommendation of the Feed Inspection Advisory Board, designate 15 percent of the tonnage taxes collected, or two hundred thousand dollars (\$200,000), whichever amount is greater, to provide funding for research and education regarding the safe manufacture, distribution, and use of commercial feed. These funds may only be spent on activities approved by the Feed Inspection Advisory Board, with approval being made prior to any expenditure.

(d) This section shall remain in effect only until January 1, 2015, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2015, deletes or extends that date.

SEC. 75. Section 71031 of the Food and Agricultural Code is amended to read:

71031. “Person” means any individual, partnership, limited liability partnership, corporation, limited liability company, firm, company, or other entity doing business in California.

SEC. 76. Section 7906 of the Government Code is amended to read:

7906. For school districts:

(a) “ADA” means a school district’s second principal apportionment units of average daily attendance as determined pursuant to Section 42238.5 of the Education Code, including average daily attendance in summer school, regional occupational centers and programs, and apprenticeship programs, and excluding average daily attendance in adult education programs. All other units of average daily attendance including, but not limited to, special day classes for special education pupils, shall be included.

(1) For purposes of this subdivision, the average daily attendance of summer school programs shall be determined pursuant to subparagraph (F) of paragraph (1) of subdivision (a) of Section 14022.5 of the Education Code.

(2) For purposes of this subdivision, the average daily attendance of apprenticeship programs shall be determined pursuant to subparagraph (D) of paragraph (1) of subdivision (a) of Section 14022.5 of the Education Code.

(3) For the 2008–09, 2009–10, 2010–11, 2011–12, and 2012–13 fiscal years, the average daily attendance of public school districts, including county superintendents of schools, serving kindergarten and grades 1 to 12, inclusive, or any part thereof, shall include the same amount of average daily attendance for classes for supplemental instruction and regional occupational centers and programs that was used for the purposes of this section for the 2007–08 fiscal year.

(b) “Foundation program level” means:

(1) For the 1978–79 fiscal year, one thousand two hundred forty-one dollars (\$1,241) for elementary districts, one thousand three hundred twenty-two dollars (\$1,322) for unified districts, and one thousand four hundred twenty-seven dollars (\$1,427) for high school districts.

(2) For the 1979–80 fiscal year to the 1986–87 fiscal year, inclusive, the levels specified in paragraph (1) increased by the lesser of the change in cost of living or California per capita personal income for the preceding calendar year.

(3) For the 1986–87 fiscal year, the levels specified in paragraph (2) increased by one hundred eighty dollars (\$180) for elementary districts, one hundred ninety-one dollars (\$191) for unified districts, and two hundred seven dollars (\$207) for high school districts.

(4) For the 1987–88 fiscal year, the levels specified in paragraph (3) increased by the lesser of the change in cost of living or California per capita personal income for the preceding calendar year.

(5) For the 1988–89 fiscal year and each fiscal year thereafter, the foundation program level shall be the appropriations limit of the school district for the current fiscal year, plus amounts paid for any nonreimbursed court or federal mandates imposed on or after November 6, 1979, less the sum of the following:

(A) Interest earned on the proceeds of taxes during the current fiscal year.

(B) The 50 percent of miscellaneous funds received during the current fiscal year which are from the proceeds of taxes.

(C) Locally voted taxes received during the current fiscal year, such as parcel taxes or square foot taxes, unless for voter-approved bonded debt.

(D) Any other local proceeds of taxes received during the current fiscal year, other than local taxes which count towards the revenue

1 limit, such as excess bond revenues transferred to a district's
2 general fund pursuant to Section 15234 of the Education Code.

3 (c) "Proceeds of taxes" shall be deemed to include subventions
4 received from the state only if those subventions are for one of the
5 following two purposes:

6 (1) Basic aid subventions of one hundred twenty dollars (\$120)
7 per ADA.

8 (2) Additional apportionments which, when added to the
9 district's local revenues as defined in Section 42238 of the
10 Education Code, do not exceed the foundation program level for
11 that district. In no case shall subventions received from the state
12 for reimbursement of state mandates in accordance with the
13 provisions of Section 6 of Article XIII B of the California
14 Constitution or of Section 17561 or for reimbursement of court or
15 federal mandates imposed on or after November 6, 1979, be
16 considered "proceeds of taxes" for the purposes of this section.

17 (d) Proceeds of taxes for a fiscal year shall not include any
18 proceeds of taxes within the district's beginning balance or reserve,
19 unless those funds were not appropriated in a prior fiscal year.
20 Funds that were appropriated to a reserve or other fund referenced
21 in Section 5 of Article XIII B of the California Constitution shall
22 be deemed to be appropriated for the purpose of this paragraph.

23 (e) The remainder of the state apportionments, including special
24 purpose apportionments and categorical aid subventions shall not
25 be considered proceeds of taxes for a school district.

26 (f) Each school district shall report to the Superintendent of
27 Public Instruction and to the Director of Finance at least annually
28 its appropriations limit, its appropriations subject to limitation, the
29 amount of its state aid apportionments and subventions included
30 within the proceeds of taxes of the school district, and amounts
31 excluded from its appropriations limit, at a time and in a manner
32 prescribed by the Superintendent of Public Instruction and
33 approved by the Director of Finance.

34 (g) For the 1988–89 fiscal year and each fiscal year thereafter,
35 nothing in paragraph (2) of subdivision (c) shall be so construed
36 as to require that the amount determined pursuant to subdivision
37 (b) be multiplied by the amount determined pursuant to subdivision
38 (a) for purposes of determining the amount of state aid included
39 in school district "proceeds of taxes" for purposes of this section.

1 SEC. 77. Section 8588.1 of the Government Code is amended
2 to read:

3 8588.1. (a) The Legislature finds and declares that this state
4 can only truly be prepared for the next disaster if the public and
5 private sector collaborate.

6 (b) The California Emergency Management Agency may
7 include, as appropriate, private businesses and nonprofit
8 organizations within its responsibilities to prepare the state for
9 disasters under this chapter. All participation by businesses and
10 nonprofit associations in this program shall be voluntary.

11 (c) The agency may do any of the following:

12 (1) Provide guidance to business and nonprofit organizations
13 representing business interests on how to integrate private sector
14 emergency preparedness measures into governmental disaster
15 planning programs.

16 (2) Conduct outreach programs to encourage business to work
17 with governments and community associations to better prepare
18 the community and their employees to survive and recover from
19 disasters.

20 (3) Develop systems so that government, businesses, and
21 employees can exchange information during disasters to protect
22 themselves and their families.

23 (4) Develop programs so that businesses and government can
24 work cooperatively to advance technology that will protect the
25 public during disasters.

26 (d) The agency may share facilities and systems for purposes
27 of subdivision (b) with the private sector to the extent the costs
28 for their use are reimbursed by the private sector.

29 (e) Proprietary information or information protected by state or
30 federal privacy laws shall not be disclosed under this program.

31 (f) Notwithstanding Section 11005, donations and private grants
32 may be accepted by the agency and shall not be subject to Section
33 11005.

34 (g) The Disaster Resistant Communities Fund is hereby created
35 in the State Treasury. Upon appropriation by the Legislature, the
36 Secretary of California Emergency Management may expend the
37 moneys in the account for the costs associated with this section.

38 (h) This section shall be implemented only to the extent that
39 in-kind contributions or donations are received from the private

1 sector, or grant funds are received from the federal government,
2 for these purposes.

3 SEC. 78. Section 8879.72 of the Government Code is amended
4 to read:

5 8879.72. (a) To establish the funding shares for each eligible
6 applicant described in paragraph (1) of subdivision (a) of Section
7 8879.71, the commission shall do the following prior to the
8 commencement of a funding cycle:

9 (1) Determine the total amount of annual revenue generated
10 from voter-approved sales taxes, voter-approved parcel or property
11 taxes, and voter-approved bridge tolls dedicated to transportation
12 improvements according to the most recent available data reported
13 to the State Board of Equalization, the Controller, or the Bay Area
14 Toll Authority.

15 (2) Establish a northern California and southern California share
16 by attributing the proportional share of revenues from
17 voter-approved sales taxes, voter-approved parcel or property
18 taxes, and voter-approved bridge tolls dedicated to transportation
19 improvements and imposed in counties in northern California to
20 the northern share, and by attributing the proportional share of
21 revenues from voter-approved sales taxes imposed in counties
22 located in southern California to the southern share. The
23 determination of whether a county is located in northern or southern
24 California shall be based on the definitions set forth in Section 187
25 of the Streets and Highways Code.

26 (3) Program funds made available to the southern share, based
27 on the determination in paragraph (2), shall be distributed to the
28 entity responsible for programming and allocating revenues from
29 the sales tax in proportion to the population of the county in which
30 the entity is located compared to the total population of southern
31 California counties with voter-approved sales taxes dedicated to
32 transportation improvements. For the purpose of calculating
33 population, the commission shall use the most recent information
34 available from the Department of Finance.

35 (4) Program funds made available to the northern share, based
36 on the determination in paragraph (2), shall be distributed as
37 follows:

38 (A) Program funds generated by voter-approved bridge tolls
39 and voter-approved parcel or property taxes dedicated to
40 transportation improvements shall be distributed to the entity

1 responsible for programming and allocating revenues from the toll
2 or tax based on the proportional share of revenues generated by
3 the toll or tax by that entity in comparison to the total revenues
4 generated by voter-approved sales taxes, voter-approved parcel or
5 property taxes, and voter-approved bridge tolls dedicated to
6 transportation improvements in northern California.

7 (B) Program funds generated by voter-approved sales taxes
8 dedicated to transportation improvements shall be distributed to
9 the entity responsible for programming and allocating revenues
10 from the sales tax in proportion to the population of the county in
11 which the entity is located compared to the total population of the
12 northern California counties with voter-approved sales taxes
13 dedicated to transportation improvements. For the purposes of
14 calculating population, the commission shall use the most recent
15 information available from the Department of Finance.

16 (b) Under this section, each fiscal year in which funds are
17 appropriated for the program shall constitute a funding cycle.

18 (c) Each eligible applicant desiring to participate in the program
19 in any funding cycle under this section shall submit to the
20 commission all of the following:

21 (1) A description of the eligible project nominated for funding,
22 including a description of the project's cost, scope, and specific
23 improvements and benefits it is anticipated to achieve.

24 (2) A description of the project's current status, including the
25 phase of delivery the project is in at the time it is nominated for
26 funding and a schedule for the project's completion.

27 (3) A description of how the project would support
28 transportation and land use planning goals within the region.

29 (4) The amount of eligible local matching funds the applicant
30 is committing to the project.

31 (5) The amount of program funds the applicant seeks from the
32 program for the project.

33 (d) The commission shall review nominated projects under this
34 section and their accompanying documentation to ensure that each
35 nominated project meets the requirements of this article and to
36 confirm that each project has a commitment of the requisite amount
37 of eligible local matching funds as required in this article. Upon
38 conducting the review of the requirements and determining the
39 proposed projects to be in compliance with this article, the projects
40 shall be deemed eligible.

1 (e) An eligible applicant that is identified to receive an allocation
2 of funds under this section, but that does not submit a project for
3 funding in a funding cycle, may utilize its funding share in a
4 subsequent funding cycle.

5 (f) In addition to the requirements in subdivision (a), the
6 commission shall, prior to the commencement of a funding cycle,
7 calculate the amount of bond funds specified in subdivision (g) of
8 Section 8879.23 that have not been appropriated and shall establish,
9 using the distribution formula set forth in subdivision (a) of Section
10 8879.71, projected targets for the distribution of those funds for
11 the purpose of planning consistent with Section 8879.501. The
12 commission shall annually review and revise these projected
13 targets.

14 SEC. 79. Section 11011.1 of the Government Code is amended
15 to read:

16 11011.1. (a) Notwithstanding any other provision of law,
17 except Article 8.5 (commencing with Section 54235) of Chapter
18 5 of Part 1 of Division 2 of Title 5, the disposal of surplus state
19 real property by the Department of General Services shall be
20 subject to the requirements of this section. For purposes of this
21 section, “surplus state real property” means real property declared
22 surplus by the Legislature and directed to be disposed of by the
23 Department of General Services, including any real property
24 previously declared surplus by the Legislature but not yet disposed
25 of by the Department of General Services prior to the enactment
26 of this section.

27 (b) (1) The department may dispose of surplus state real
28 property by sale, lease, exchange, a sale combined with an
29 exchange, or other manner of disposition of property, as authorized
30 by the Legislature, upon any terms and conditions and subject to
31 any reservations and exceptions the department deems to be in the
32 best interests of the state.

33 (2) (A) The Legislature finds and declares that the provision
34 of decent housing for all Californians is a state goal of the highest
35 priority. The disposal of surplus state real property is a direct and
36 substantial public purpose of statewide concern and will serve an
37 important public purpose, including mitigating the environmental
38 effects of state activities. Therefore, it is the intent of the
39 Legislature that priority be given, as specified in this section, to
40 the disposal of surplus state real property to housing for persons

1 and families of low or moderate income, where land is suitable
2 for housing and there is a need for housing in the community.

3 (B) Surplus state real property that has been determined by the
4 department not to be needed by any state agency shall be offered
5 to any local agency, as defined in subdivision (a) of Section 54221,
6 and then to nonprofit affordable housing sponsors, prior to being
7 offered for sale to private entities or individuals. As used in this
8 subdivision, “nonprofit affordable housing sponsor” means any
9 of the following:

10 (i) A nonprofit corporation incorporated pursuant to Division
11 2 (commencing with Section 5000) of Title 1 of the Corporations
12 Code.

13 (ii) A cooperative housing corporation which is a stock
14 cooperative, as defined by Section 11003.2 of the Business and
15 Professions Code.

16 (iii) A limited-dividend housing corporation.

17 (C) The department, subject to this section, shall maintain a list
18 of surplus state real property in a conspicuous place on its Internet
19 Web site. The department shall provide local agencies and, upon
20 request, members of the public, with electronic notification of
21 updates to the list of properties.

22 (D) To be considered as a potential priority buyer of the surplus
23 state real property, a local agency or nonprofit affordable housing
24 sponsor shall notify the department of its interest in the surplus
25 state real property within 90 days of the department posting on its
26 Internet Web site the notice of the availability of the surplus state
27 real property. The local agency or nonprofit affordable housing
28 sponsor shall demonstrate, to the satisfaction of the department,
29 that the surplus state real property, or portion of that surplus state
30 real property, is to be used by the local agency or nonprofit
31 affordable housing sponsor for open space, public parks, affordable
32 housing projects, or development of local government-owned
33 facilities. When more than one local agency expresses an interest
34 in the surplus state real property, priority shall be given to the local
35 agency that intends to use the surplus state real property for
36 affordable housing. If no agreement or transfer of title occurs, the
37 priority shall next be given to the local agency that intends to use
38 the surplus state real property for open space, public parks, or
39 development of local government-owned facilities. The sales
40 agreement shall be executed by the local agency or nonprofit

1 affordable housing sponsor within 60 days after the director
2 determines the local agency or nonprofit affordable housing
3 sponsor is to receive the surplus state real property. The sale of
4 the surplus state real property to a local agency or nonprofit
5 affordable housing sponsor pursuant to this section shall be
6 completed, and title transferred, within 60 days of the date the
7 department executes the sales agreement, or, if required by law,
8 no later than 60 days after the State Public Works Board has
9 authorized the sale. If the sale of a surplus state real property to a
10 local agency or nonprofit affordable housing sponsor is not
11 completed within the timeframe specified in this subparagraph,
12 then the department shall proceed with the process for disposal to
13 other private entities or individuals.

14 (c) (1) If more than one local agency desires the surplus state
15 real property for use as an open space, a public park, or the
16 development of a local government-owned facility, the department
17 shall transfer the surplus state real property to the local agency
18 offering the highest price above fair market value. If more than
19 one local agency desires the surplus state real property for use as
20 an affordable housing project, the department shall transfer the
21 surplus state real property to the local agency offering the greatest
22 number of affordable housing units. If more than one nonprofit
23 affordable housing sponsor desires the surplus state real property
24 for use as an affordable housing project, the department shall
25 transfer the surplus state real property to the nonprofit affordable
26 housing sponsor offering the greatest number of affordable housing
27 units.

28 (2) If no local agency or nonprofit affordable housing sponsor
29 is interested, or an agreement, as provided above, is not reached,
30 then the disposal of the surplus state real property to private entities
31 or individuals shall be pursuant to a public bidding process
32 designed to obtain the highest most certain return for the state from
33 a responsible bidder, and any transaction based on such a bidding
34 process shall be deemed to be the fair market value for the purposes
35 of the reporting requirements pursuant to subdivision (d).

36 (3) Notwithstanding any other provision of law, the department
37 may sell surplus state real property, or a portion of surplus state
38 real property, to a local agency, or to a nonprofit affordable housing
39 sponsor if no local agency is interested in the surplus state real
40 property, for affordable housing projects at a sales price less than

1 fair market value if the department determines that such a discount
2 will enable the provision of housing for persons and families of
3 low or moderate income. Nothing shall preclude a local agency
4 that purchases the surplus state real property for affordable housing
5 from reconveying the surplus state real property to a nonprofit
6 affordable housing sponsor for development of affordable housing.
7 Transfer of title to the surplus state real property or lease of the
8 surplus state real property for affordable housing shall be
9 conditioned upon continued use of the surplus state real property
10 as housing for persons and families of low and moderate income
11 for at least 40 years and the department shall record a regulatory
12 agreement that imposes affordability covenants, conditions, and
13 restrictions on the surplus state real property. The regulatory
14 agreement shall be a first priority lien on the surplus state real
15 property and last for a period of at least 40 years, and if another
16 state agency is lending funds for a project, a combined regulatory
17 agreement shall be utilized. Notwithstanding any other provision
18 of law, the regulatory agreement shall not be subordinated to any
19 other lien or encumbrance except for any federal loan program the
20 statutes or regulations of which require a first priority lien for that
21 federal loan.

22 (4) Notwithstanding any other provision of law, the Director of
23 General Services may transfer surplus state real property to a local
24 agency for less than fair market value if the local agency uses the
25 surplus state real property for parks or open-space purposes. The
26 deed or other instrument of transfer shall provide that the surplus
27 state real property would revert to the state if the use changed to
28 a use other than parks or open-space purposes during the period
29 of 25 years after the transfer date. For the purpose of this paragraph,
30 “open-space purposes” means the use of land for public recreation,
31 enjoyment of scenic beauty, or conservation or use of natural
32 resources.

33 (d) Thirty days prior to executing a transaction for a sale, lease,
34 exchange, a sale combined with an exchange, or other manner of
35 disposition of the surplus state real property for less than fair
36 market value or for affordable housing, or as authorized by the
37 Legislature, the Director of General Services shall report to the
38 chairpersons of the fiscal committees of the Legislature all of the
39 following:

40 (1) The financial terms of the transaction.

1 (2) A comparison of fair market value for the surplus state real
2 property and the terms listed in paragraph (1).

3 (3) The basis for agreeing to terms and conditions other than
4 fair market value.

5 (e) As to surplus state real property sold or exchanged pursuant
6 to this section, the director shall except and reserve to the state all
7 mineral deposits, as described in Section 6407 of the Public
8 Resources Code, together with the right to prospect for, mine, and
9 remove the deposits. If, however, the director determines that there
10 is little or no potential for mineral deposits, the reservation may
11 be without surface right of entry above a depth of 500 feet, or the
12 rights to prospect for, mine, and remove the deposits shall be
13 limited to those areas of the surplus state real property conveyed
14 that the director determines to be reasonably necessary for the
15 removal of the deposits.

16 (f) The failure to comply with this section, except for subdivision
17 (d), shall not invalidate the transfer or conveyance of surplus state
18 real property to a purchaser for value.

19 (g) For purposes of this section, fair market value is established
20 by an appraisal and economic evaluation conducted by the
21 department or approved by the department.

22 SEC. 80. Section 11011.2 of the Government Code is amended
23 to read:

24 11011.2. (a) (1) Notwithstanding any other law, including,
25 but not limited to, Sections 11011 and 14670, except as provided
26 in this section, the Department of General Services may lease real
27 property under the jurisdiction of a state agency, department, or
28 district agricultural association, if the Director of General Services
29 determines that the real property is of no immediate need to the
30 state but may have some potential future use to the program needs
31 of the agency, department, or district agricultural association.

32 (2) The Director of General Services may not lease any of the
33 following real property pursuant to this section:

34 (A) Tax-deeded land or lands under the jurisdiction of the State
35 Lands Commission.

36 (B) Land that has escheated to the state or that has been
37 distributed to the state by court decree in estates of deceased
38 persons.

39 (C) Lands under the jurisdiction of the State Coastal
40 Conservancy or another state conservancy.

1 (D) Lands under the jurisdiction of the Department of
2 Transportation or the California State University system, or land
3 owned by the Regents of the University of California.

4 (E) Lands under the jurisdiction of the Department of Parks and
5 Recreation.

6 (F) Lands under the jurisdiction of the Department of Fish and
7 Game.

8 (3) A lease entered into pursuant to this section shall be set at
9 the amount of the lease's fair market value, as determined by the
10 Director of General Services. The Director of General Services
11 may determine the length of term or a use of the lease, and specify
12 any other terms and conditions which are determined to be in the
13 best interest of the state.

14 (b) The Department of General Services may enter into a
15 long-term lease of real property pursuant to this section that has
16 outstanding lease revenue bonds and for which the real property
17 cannot be disencumbered from the bonds, only if the issuer and
18 trustee for the bonds approves the lease transaction, and this
19 approval takes into consideration, among other things, that the
20 proposed lease transaction does not breach a covenant or obligation
21 of the issuer or trustee.

22 (c) (1) All issuer- and trustee-related costs for reviewing a
23 proposed lease transaction pursuant to this section, and all other
24 costs of the lease transaction related to the defeasance or other
25 retirement of any bonds, including the cost of nationally recognized
26 bond counsel, shall be paid from the proceeds of that lease.

27 (2) The Department of General Services shall be reimbursed
28 for any reasonable costs or expenses incurred in conducting a
29 transaction pursuant to this section.

30 (3) Notwithstanding subdivision (g) of Section 11011, the
31 Department of General Services shall deposit into the General
32 Fund the net proceeds of a lease entered into pursuant to this
33 section, after deducting the amount of the reimbursement of costs
34 incurred pursuant to this section or the reimbursement of
35 adjustments to the General Fund loan made pursuant to Section 8
36 of Chapter 20 of the 2009–10 Fourth Extraordinary Session from
37 the lease.

38 (d) The Department of General Services shall transmit a report
39 to each house of the Legislature on or before June 30, 2011, and
40 on or before June 30 each year thereafter, listing every new lease

1 that exceeds a period of five years entered into under the authority
2 of this section and the following information regarding each listed
3 lease:

- 4 (1) Lease payments.
- 5 (2) Length of the lease.
- 6 (3) Identification of the leasing parties.
- 7 (4) Identification of the leased property.
- 8 (5) Any other information the Director of General Services
9 determines should be included in the report to adequately describe
10 the material provisions of the lease.

11 SEC. 81. Section 11126 of the Government Code is amended
12 to read:

13 11126. (a) (1) This article does not prevent a state body from
14 holding closed sessions during a regular or special meeting to
15 consider the appointment, employment, evaluation of performance,
16 or dismissal of a public employee or to hear complaints or charges
17 brought against that employee by another person or employee
18 unless the employee requests a public hearing.

19 (2) As a condition of holding a closed session on the complaints
20 or charges to consider disciplinary action or to consider dismissal,
21 the employee shall be given written notice of his or her right to
22 have a public hearing, rather than a closed session, and that notice
23 shall be delivered to the employee personally or by mail at least
24 24 hours before the time for holding a regular or special meeting.
25 If notice is not given, any disciplinary or other action taken against
26 an employee at the closed session shall be null and void.

27 (3) The state body also may exclude from a public or closed
28 session, during the examination of a witness, any or all other
29 witnesses in the matter being investigated by the state body.

30 (4) Following the public hearing or closed session, the body
31 may deliberate on the decision to be reached in a closed session.

32 (b) For purposes of this section, “employee” does not include
33 a person who is elected to, or appointed to a public office by, a
34 state body. However, officers of the California State University
35 who receive compensation for their services, other than per diem
36 and ordinary and necessary expenses, shall, when engaged in that
37 capacity, be considered employees. Furthermore, for purposes of
38 this section, “employee” includes a person exempt from civil
39 service pursuant to subdivision (e) of Section 4 of Article VII of
40 the California Constitution.

1 (c) This article does not do any of the following:

2 (1) Prevent state bodies that administer the licensing of persons
3 engaging in businesses or professions from holding closed sessions
4 to prepare, approve, grade, or administer examinations.

5 (2) Prevent an advisory body of a state body that administers
6 the licensing of persons engaged in businesses or professions from
7 conducting a closed session to discuss matters that the advisory
8 body has found would constitute an unwarranted invasion of the
9 privacy of an individual licensee or applicant if discussed in an
10 open meeting, provided that the advisory body does not include a
11 quorum of the members of the state body it advises. Those matters
12 may include review of an applicant's qualifications for licensure
13 and an inquiry specifically related to the state body's enforcement
14 program concerning an individual licensee or applicant where the
15 inquiry occurs prior to the filing of a civil, criminal, or
16 administrative disciplinary action against the licensee or applicant
17 by the state body.

18 (3) Prohibit a state body from holding a closed session to
19 deliberate on a decision to be reached in a proceeding required to
20 be conducted pursuant to Chapter 5 (commencing with Section
21 11500) or similar provisions of law.

22 (4) Grant a right to enter a correctional institution or the grounds
23 of a correctional institution if that right is not otherwise granted
24 by law, and this article does not prevent a state body from holding
25 a closed session when considering and acting upon the
26 determination of a term, parole, or release of an individual or other
27 disposition of an individual case, or if public disclosure of the
28 subjects under discussion or consideration is expressly prohibited
29 by statute.

30 (5) Prevent a closed session to consider the conferring of
31 honorary degrees, or gifts, donations, and bequests that the donor
32 or proposed donor has requested in writing to be kept confidential.

33 (6) Prevent the Alcoholic Beverage Control Appeals Board from
34 holding a closed session for the purpose of holding a deliberative
35 conference as provided in Section 11125.

36 (7) (A) Prevent a state body from holding closed sessions with
37 its negotiator prior to the purchase, sale, exchange, or lease of real
38 property by or for the state body to give instructions to its
39 negotiator regarding the price and terms of payment for the
40 purchase, sale, exchange, or lease.

1 (B) However, prior to the closed session, the state body shall
2 hold an open and public session in which it identifies the real
3 property or real properties that the negotiations may concern and
4 the person or persons with whom its negotiator may negotiate.

5 (C) For purposes of this paragraph, the negotiator may be a
6 member of the state body.

7 (D) For purposes of this paragraph, “lease” includes renewal or
8 renegotiation of a lease.

9 (E) This paragraph does not preclude a state body from holding
10 a closed session for discussions regarding eminent domain
11 proceedings pursuant to subdivision (e).

12 (8) Prevent the California Postsecondary Education Commission
13 from holding closed sessions to consider matters pertaining to the
14 appointment or termination of the Director of the California
15 Postsecondary Education Commission.

16 (9) Prevent the Bureau for Private Postsecondary Education
17 from holding closed sessions to consider matters pertaining to the
18 appointment or termination of the Executive Director of the Bureau
19 for Private Postsecondary Education.

20 (10) Prevent the Franchise Tax Board from holding closed
21 sessions for the purpose of discussion of confidential tax returns
22 or information the public disclosure of which is prohibited by law,
23 or from considering matters pertaining to the appointment or
24 removal of the Executive Officer of the Franchise Tax Board.

25 (11) Require the Franchise Tax Board to notice or disclose any
26 confidential tax information considered in closed sessions, or
27 documents executed in connection therewith, the public disclosure
28 of which is prohibited pursuant to Article 2 (commencing with
29 Section 19542) of Chapter 7 of Part 10.2 of Division 2 of the
30 Revenue and Taxation Code.

31 (12) Prevent the Corrections Standards Authority from holding
32 closed sessions when considering reports of crime conditions under
33 Section 6027 of the Penal Code.

34 (13) Prevent the State Air Resources Board from holding closed
35 sessions when considering the proprietary specifications and
36 performance data of manufacturers.

37 (14) Prevent the State Board of Education or the Superintendent
38 of Public Instruction, or a committee advising the board or the
39 Superintendent, from holding closed sessions on those portions of
40 its review of assessment instruments pursuant to Chapter 5

1 (commencing with Section 60600) of, or pursuant to Chapter 9
2 (commencing with Section 60850) of, Part 33 of Division 4 of
3 Title 2 of the Education Code during which actual test content is
4 reviewed and discussed. The purpose of this provision is to
5 maintain the confidentiality of the assessments under review.

6 (15) Prevent the California Integrated Waste Management Board
7 or its auxiliary committees from holding closed sessions for the
8 purpose of discussing confidential tax returns, discussing trade
9 secrets or confidential or proprietary information in its possession,
10 or discussing other data, the public disclosure of which is
11 prohibited by law.

12 (16) Prevent a state body that invests retirement, pension, or
13 endowment funds from holding closed sessions when considering
14 investment decisions. For purposes of consideration of shareholder
15 voting on corporate stocks held by the state body, closed sessions
16 for the purposes of voting may be held only with respect to election
17 of corporate directors, election of independent auditors, and other
18 financial issues that could have a material effect on the net income
19 of the corporation. For purposes of real property investment
20 decisions that may be considered in a closed session pursuant to
21 this paragraph, a state body shall also be exempt from the
22 provisions of paragraph (7) relating to the identification of real
23 properties prior to the closed session.

24 (17) Prevent a state body, or boards, commissions,
25 administrative officers, or other representatives that may properly
26 be designated by law or by a state body, from holding closed
27 sessions with its representatives in discharging its responsibilities
28 under Chapter 10 (commencing with Section 3500), Chapter 10.3
29 (commencing with Section 3512), Chapter 10.5 (commencing with
30 Section 3525), or Chapter 10.7 (commencing with Section 3540)
31 of Division 4 of Title 1 as the sessions relate to salaries, salary
32 schedules, or compensation paid in the form of fringe benefits.
33 For the purposes enumerated in the preceding sentence, a state
34 body also may meet with a state conciliator who has intervened
35 in the proceedings.

36 (18) (A) Prevent a state body from holding closed sessions to
37 consider matters posing a threat or potential threat of criminal or
38 terrorist activity against the personnel, property, buildings,
39 facilities, or equipment, including electronic data, owned, leased,
40 or controlled by the state body, where disclosure of these

1 considerations could compromise or impede the safety or security
2 of the personnel, property, buildings, facilities, or equipment,
3 including electronic data, owned, leased, or controlled by the state
4 body.

5 (B) Notwithstanding any other provision of law, a state body,
6 at any regular or special meeting, may meet in a closed session
7 pursuant to subparagraph (A) upon a two-thirds vote of the
8 members present at the meeting.

9 (C) After meeting in closed session pursuant to subparagraph
10 (A), the state body shall reconvene in open session prior to
11 adjournment and report that a closed session was held pursuant to
12 subparagraph (A), the general nature of the matters considered,
13 and whether action was taken in closed session.

14 (D) After meeting in closed session pursuant to subparagraph
15 (A), the state body shall submit to the Legislative Analyst written
16 notification stating that it held this closed session, the general
17 reason or reasons for the closed session, the general nature of the
18 matters considered, and whether action was taken in closed session.
19 The Legislative Analyst shall retain for no less than four years
20 written notification received from a state body pursuant to this
21 subparagraph.

22 (d) (1) Notwithstanding any other provision of law, a meeting
23 of the Public Utilities Commission at which the rates of entities
24 under the commission's jurisdiction are changed shall be open and
25 public.

26 (2) This article does not prevent the Public Utilities Commission
27 from holding closed sessions to deliberate on the institution of
28 proceedings, or disciplinary actions against any person or entity
29 under the jurisdiction of the commission.

30 (e) (1) This article does not prevent a state body, based on the
31 advice of its legal counsel, from holding a closed session to confer
32 with, or receive advice from, its legal counsel regarding pending
33 litigation when discussion in open session concerning those matters
34 would prejudice the position of the state body in the litigation.

35 (2) For purposes of this article, all expressions of the
36 lawyer-client privilege other than those provided in this subdivision
37 are hereby abrogated. This subdivision is the exclusive expression
38 of the lawyer-client privilege for purposes of conducting closed
39 session meetings pursuant to this article. For purposes of this

1 subdivision, litigation shall be considered pending when any of
2 the following circumstances exist:

3 (A) An adjudicatory proceeding before a court, an administrative
4 body exercising its adjudicatory authority, a hearing officer, or an
5 arbitrator, to which the state body is a party, has been initiated
6 formally.

7 (B) (i) A point has been reached where, in the opinion of the
8 state body on the advice of its legal counsel, based on existing
9 facts and circumstances, there is a significant exposure to litigation
10 against the state body.

11 (ii) Based on existing facts and circumstances, the state body
12 is meeting only to decide whether a closed session is authorized
13 pursuant to clause (i).

14 (C) (i) Based on existing facts and circumstances, the state
15 body has decided to initiate or is deciding whether to initiate
16 litigation.

17 (ii) The legal counsel of the state body shall prepare and submit
18 to it a memorandum stating the specific reasons and legal authority
19 for the closed session. If the closed session is pursuant to paragraph
20 (1), the memorandum shall include the title of the litigation. If the
21 closed session is pursuant to subparagraph (A) or (B), the
22 memorandum shall include the existing facts and circumstances
23 on which it is based. The legal counsel shall submit the
24 memorandum to the state body prior to the closed session, if
25 feasible, and in any case no later than one week after the closed
26 session. The memorandum shall be exempt from disclosure
27 pursuant to Section 6254.25.

28 (iii) For purposes of this subdivision, “litigation” includes any
29 adjudicatory proceeding, including eminent domain, before a court,
30 administrative body exercising its adjudicatory authority, hearing
31 officer, or arbitrator.

32 (iv) Disclosure of a memorandum required under this
33 subdivision is not a waiver of the lawyer-client privilege, as
34 provided for under Article 3 (commencing with Section 950) of
35 Chapter 4 of Division 8 of the Evidence Code.

36 (f) In addition to subdivisions (a), (b), and (c), this article does
37 not do any of the following:

38 (1) Prevent a state body operating under a joint powers
39 agreement for insurance pooling from holding a closed session to
40 discuss a claim for the payment of tort liability or public liability

1 losses incurred by the state body or a member agency under the
2 joint powers agreement.

3 (2) Prevent the examining committee established by the State
4 Board of Forestry and Fire Protection, pursuant to Section 763 of
5 the Public Resources Code, from conducting a closed session to
6 consider disciplinary action against an individual professional
7 forester prior to the filing of an accusation against the forester
8 pursuant to Section 11503.

9 (3) Prevent an administrative committee established by the
10 California Board of Accountancy pursuant to Section 5020 of the
11 Business and Professions Code from conducting a closed session
12 to consider disciplinary action against an individual accountant
13 prior to the filing of an accusation against the accountant pursuant
14 to Section 11503. This article does not prevent an examining
15 committee established by the California Board of Accountancy
16 pursuant to Section 5023 of the Business and Professions Code
17 from conducting a closed hearing to interview an individual
18 applicant or accountant regarding the applicant's qualifications.

19 (4) Prevent a state body, as defined in subdivision (b) of Section
20 11121, from conducting a closed session to consider a matter that
21 properly could be considered in closed session by the state body
22 the authority of which it exercises.

23 (5) Prevent a state body, as defined in subdivision (d) of Section
24 11121, from conducting a closed session to consider a matter that
25 properly could be considered in a closed session by the body
26 defined as a state body pursuant to subdivision (a) or (b) of Section
27 11121.

28 (6) Prevent a state body, as defined in subdivision (c) of Section
29 11121, from conducting a closed session to consider a matter that
30 properly could be considered in a closed session by the state body
31 it advises.

32 (7) Prevent the State Board of Equalization from holding closed
33 sessions for either of the following:

34 (A) When considering matters pertaining to the appointment or
35 removal of the Executive Secretary of the State Board of
36 Equalization.

37 (B) For the purpose of hearing confidential taxpayer appeals or
38 data, the public disclosure of which is prohibited by law.

39 (8) Require the State Board of Equalization to disclose action
40 taken in closed session or documents executed in connection with

1 that action, the public disclosure of which is prohibited by law
2 pursuant to Sections 15619 and 15641 of this code and Sections
3 833, 7056, 8255, 9255, 11655, 30455, 32455, 38705, 38706, 43651,
4 45982, 46751, 50159, 55381, and 60609 of the Revenue and
5 Taxation Code.

6 (9) Prevent the California Earthquake Prediction Evaluation
7 Council, or other body appointed to advise the Secretary of
8 California Emergency Management or the Governor concerning
9 matters relating to volcanic or earthquake predictions, from holding
10 closed sessions when considering the evaluation of possible
11 predictions.

12 (g) This article does not prevent either of the following:

13 (1) The Teachers' Retirement Board or the Board of
14 Administration of the Public Employees' Retirement System from
15 holding closed sessions when considering matters pertaining to
16 the recruitment, appointment, employment, or removal of the chief
17 executive officer or when considering matters pertaining to the
18 recruitment or removal of the Chief Investment Officer of the State
19 Teachers' Retirement System or the Public Employees' Retirement
20 System.

21 (2) The Commission on Teacher Credentialing from holding
22 closed sessions when considering matters relating to the
23 recruitment, appointment, or removal of its executive director.

24 (h) This article does not prevent the Board of Administration
25 of the Public Employees' Retirement System from holding closed
26 sessions when considering matters relating to the development of
27 rates and competitive strategy for plans offered pursuant to Chapter
28 15 (commencing with Section 21660) of Part 3 of Division 5 of
29 Title 2.

30 (i) This article does not prevent the Managed Risk Medical
31 Insurance Board from holding closed sessions when considering
32 matters related to the development of rates and contracting strategy
33 for entities contracting or seeking to contract with the board
34 pursuant to Part 6.2 (commencing with Section 12693), Part 6.3
35 (commencing with Section 12695), Part 6.4 (commencing with
36 Section 12699.50), or Part 6.5 (commencing with Section 12700)
37 of Division 2 of the Insurance Code.

38 (j) Nothing in this article shall be construed to prevent the board
39 of the State Compensation Insurance Fund from holding closed
40 sessions in the following:

1 (1) When considering matters related to claims pursuant to
2 Chapter 1 (commencing with Section 3200) of Part 1 of Division
3 4 of the Labor Code, to the extent that confidential medical
4 information or other individually identifiable information would
5 be disclosed.

6 (2) To the extent that matters related to audits and investigations
7 that have not been completed would be disclosed.

8 (3) To the extent that an internal audit containing proprietary
9 information would be disclosed.

10 (4) To the extent that the session would address the development
11 of rates, contracting strategy, underwriting, or competitive strategy,
12 pursuant to the powers granted to the board in Chapter 4
13 (commencing with Section 11770) of Part 3 of Division 2 of the
14 Insurance Code, when discussion in open session concerning those
15 matters would prejudice the position of the State Compensation
16 Insurance Fund.

17 (k) The State Compensation Insurance Fund shall comply with
18 the procedures specified in Section 11125.4 with respect to any
19 closed session or meeting authorized by subdivision (j), and in
20 addition shall provide an opportunity for a member of the public
21 to be heard on the issue of the appropriateness of closing the
22 meeting or session.

23 SEC. 82. Section 12715 of the Government Code is amended
24 to read:

25 12715. (a) The Controller, acting in consultation with the
26 California Gambling Control Commission, shall divide the County
27 Tribal Casino Account for each county that has gaming devices
28 that are subject to an obligation to make contributions to the Indian
29 Gaming Special Distribution Fund into a separate account for each
30 tribe that operates a casino within the county. These accounts shall
31 be known as Individual Tribal Casino Accounts, and funds may
32 be released from these accounts to make grants selected by an
33 Indian Gaming Local Community Benefit Committee pursuant to
34 the method established by this section to local jurisdictions
35 impacted by tribal casinos. Each Individual Tribal Casino Account
36 shall be funded in proportion to the amount that each individual
37 tribe paid in the prior fiscal year to the Indian Gaming Special
38 Distribution Fund.

39 (b) (1) There is hereby created in each county in which Indian
40 gaming is conducted an Indian Gaming Local Community Benefit

Committee. The selection of all grants from each Individual Tribal Casino Account or County Tribal Casino Account shall be made by each county's Indian Gaming Local Community Benefit Committee. In selecting grants, the Indian Gaming Local Community Benefit Committee shall follow the priorities established in subdivision (g) and the requirements specified in subdivision (h). This committee has the following additional responsibilities:

(A) Establishing all application policies and procedures for grants from the Individual Tribal Casino Account or County Tribal Casino Account.

(B) Assessing the eligibility of applications for grants from local jurisdictions impacted by tribal gaming operations.

(C) Determining the appropriate amount for reimbursement from the aggregate county tribal account of the demonstrated costs incurred by the county for administering the grant programs. The reimbursement for county administrative costs may not exceed 2 percent of the aggregate county tribal account in any given fiscal year.

(2) Except as provided in Section 12715.5, the Indian Gaming Local Community Benefit Committee shall be composed of seven representatives, consisting of the following:

(A) Two representatives from the county, selected by the county board of supervisors.

(B) Three elected representatives from cities located within four miles of a tribal casino in the county, selected by the county board of supervisors. In the event that there are no cities located within four miles of a tribal casino in the county, other local representatives may be selected upon mutual agreement by the county board of supervisors and a majority of the tribes paying into the Indian Gaming Special Distribution Fund in the county. When there are no cities within four miles of a tribal casino in the county, and when the Indian Gaming Local Community Benefit Committee acts on behalf of a county where no tribes pay into the Indian Gaming Special Distribution Fund, other local representatives may be selected upon mutual agreement by the county board of supervisors and a majority of the tribes operating casinos in the county. However, if only one city is within four miles of a tribal casino and that same casino is located entirely within the unincorporated area of that particular county, only one

1 elected representative from that city shall be included on the Indian
2 Gaming Local Community Benefit Committee.

3 (C) Two representatives selected upon the recommendation of
4 a majority of the tribes paying into the Indian Gaming Special
5 Distribution Fund in each county. When an Indian Gaming Local
6 Community Benefit Committee acts on behalf of a county where
7 no tribes pay into the Indian Gaming Special Distribution Fund,
8 the two representatives may be selected upon the recommendation
9 of the tribes operating casinos in the county.

10 (c) Sixty percent of each Individual Tribal Casino Account shall
11 be available for nexus grants on a yearly basis to cities and counties
12 impacted by tribes that are paying into the Indian Gaming Special
13 Distribution Fund, according to the four-part nexus test described
14 in paragraph (1). Grant awards shall be selected by each county's
15 Indian Gaming Local Community Benefit Committee and shall
16 be administered by the county. Grants may be awarded on a
17 multiyear basis, and these multiyear grants shall be accounted for
18 in the grant process for each year.

19 (1) A nexus test based on the geographical proximity of a local
20 government jurisdiction to an individual Indian land upon which
21 a tribal casino is located shall be used by each county's Indian
22 Gaming Local Community Benefit Committee to determine the
23 relative priority for grants, using the following criteria:

24 (A) Whether the local government jurisdiction borders the Indian
25 lands on all sides.

26 (B) Whether the local government jurisdiction partially borders
27 Indian lands.

28 (C) Whether the local government jurisdiction maintains a
29 highway, road, or other thoroughfare that is the predominant access
30 route to a casino that is located within four miles.

31 (D) Whether all or a portion of the local government jurisdiction
32 is located within four miles of a casino.

33 (2) Fifty percent of the amount specified in subdivision (c) shall
34 be awarded in equal proportions to local government jurisdictions
35 that meet all four of the nexus test criteria in paragraph (1). If no
36 eligible local government jurisdiction satisfies this requirement,
37 the amount specified in this paragraph shall be made available for
38 nexus grants in equal proportions to local government jurisdictions
39 meeting the requirements of paragraph (3) or (4).

1 (3) Thirty percent of the amount specified in subdivision (c)
2 shall be awarded in equal proportions to local government
3 jurisdictions that meet three of the nexus test criteria in paragraph
4 (1). If no eligible local government jurisdiction satisfies this
5 requirement, the amount specified in this paragraph shall be made
6 available for nexus grants in equal proportions to local government
7 jurisdictions meeting the requirements of paragraph (2) or (4).

8 (4) Twenty percent of the amount specified in subdivision (c)
9 shall be awarded in equal proportions to local government
10 jurisdictions that meet two of the nexus test criteria in paragraph
11 (1). If no eligible local government jurisdiction satisfies this
12 requirement, the amount specified in this paragraph shall be made
13 available for nexus grants in equal proportions to local government
14 jurisdictions meeting the requirements of paragraph (2) or (3).

15 (d) Twenty percent of each Individual Tribal Casino Account
16 shall be available for discretionary grants to local jurisdictions
17 impacted by tribes that are paying into the Indian Gaming Special
18 Distribution Fund. These discretionary grants shall be made
19 available to all local jurisdictions in the county irrespective of any
20 nexus to impacts from any particular tribal casino, as described in
21 paragraph (1) of subdivision (c). Grant awards shall be selected
22 by each county's Indian Gaming Local Community Benefit
23 Committee and shall be administered by the county. Grants may
24 be awarded on a multiyear basis, and these multiyear grants shall
25 be accounted for in the grant process for each year.

26 (e) (1) Twenty percent of each Individual Tribal Casino Account
27 shall be available for discretionary grants to local jurisdictions
28 impacted by tribes that are not paying into the Indian Gaming
29 Special Distribution Fund. These grants shall be made available
30 to local jurisdictions in the county irrespective of any nexus to
31 impacts from any particular tribal casino, as described in paragraph
32 (1) of subdivision (c), and irrespective of whether the impacts
33 presented are from a tribal casino that is not paying into the Indian
34 Gaming Special Distribution Fund. Grant awards shall be selected
35 by each county's Indian Gaming Local Community Benefit
36 Committee and shall be administered by the county. Grants may
37 be awarded on a multiyear basis, and these multiyear grants shall
38 be accounted for in the grant process for each year.

1 (A) Grants awarded pursuant to this subdivision are limited to
2 addressing service-oriented impacts and providing assistance with
3 one-time large capital projects related to Indian gaming impacts.

4 (B) Grants shall be subject to the sole sponsorship of the tribe
5 that pays into the Indian Gaming Special Distribution Fund and
6 the recommendations of the Indian Gaming Local Community
7 Benefit Committee for that county.

8 (2) If an eligible county does not have a tribal casino operated
9 by a tribe that does not pay into the Indian Gaming Special
10 Distribution Fund, the moneys available for discretionary grants
11 under this subdivision shall be available for distribution pursuant
12 to subdivision (d).

13 (f) (1) For each county that does not have gaming devices
14 subject to an obligation to make payments to the Indian Gaming
15 Special Distribution Fund, funds may be released from the county's
16 County Tribal Casino Account to make grants selected by the
17 county's Indian Gaming Local Community Benefit Committee
18 pursuant to the method established by this section to local
19 jurisdictions impacted by tribal casinos. These grants shall be made
20 available to local jurisdictions in the county irrespective of any
21 nexus to any particular tribal casino. These grants shall follow the
22 priorities specified in subdivision (g) and the requirements specified
23 in subdivision (h).

24 (2) Funds not allocated from a county tribal casino account by
25 the end of each fiscal year shall revert back to the Indian Gaming
26 Special Distribution Fund. Moneys allocated for the 2003–04 fiscal
27 year shall be eligible for expenditure through December 31, 2004.

28 (g) The following uses shall be the priorities for the receipt of
29 grant moneys from Individual Tribal Casino Accounts: law
30 enforcement, fire services, emergency medical services,
31 environmental impacts, water supplies, waste disposal, behavioral,
32 health, planning and adjacent land uses, public health, roads,
33 recreation and youth programs, and child care programs.

34 (h) In selecting grants pursuant to subdivision (b), an Indian
35 Gaming Local Community Benefit Committee shall select only
36 grant applications that mitigate impacts from casinos on local
37 jurisdictions. If a local jurisdiction uses a grant selected pursuant
38 to subdivision (b) for any unrelated purpose, the grant shall
39 terminate immediately and any moneys not yet spent shall revert
40 to the Indian Gaming Special Distribution Fund. If a local

1 jurisdiction approves an expenditure that mitigates an impact from
2 a casino on a local jurisdiction and that also provides other benefits
3 to the local jurisdiction, the grant selected pursuant to subdivision
4 (b) shall be used to finance only the proportionate share of the
5 expenditure that mitigates the impact from the casino.

6 (i) All grants from Individual Tribal Casino Accounts shall be
7 made only upon the affirmative sponsorship of the tribe paying
8 into the Indian Gaming Special Distribution Fund from whose
9 Individual Tribal Casino Account the grant moneys are available
10 for distribution. Tribal sponsorship shall confirm that the grant
11 application has a reasonable relationship to a casino impact and
12 satisfies at least one of the priorities listed in subdivision (g). A
13 grant may not be made for any purpose that would support or fund,
14 directly or indirectly, any effort related to the opposition or
15 challenge to Indian gaming in the state, and, to the extent any
16 awarded grant is utilized for any prohibited purpose by any local
17 government, upon notice given to the county by any tribe from
18 whose Individual Tribal Casino Account the awarded grant went
19 toward that prohibited use, the grant shall terminate immediately
20 and any moneys not yet used shall again be made available for
21 qualified nexus grants.

22 (j) A local government jurisdiction that is a recipient of a grant
23 from an Individual County Tribal Casino Account or a County
24 Tribal Casino Account shall provide notice to the public, either
25 through a slogan, signage, or other mechanism, stating that the
26 local government project has received funding from the Indian
27 Gaming Special Distribution Fund and further identifying the
28 particular Individual Tribal Casino Account from which the grant
29 derives.

30 (k) (1) Each county's Indian Gaming Local Community Benefit
31 Committee shall submit to the Controller a list of approved projects
32 for funding from Individual Tribal Casino Accounts. Upon receipt
33 of this list, the Controller shall release the funds directly to the
34 local government entities for which a grant has been approved by
35 the committee.

36 (2) Funds not allocated from an Individual Tribal Casino
37 Account by the end of each fiscal year shall revert back to the
38 Indian Gaming Special Distribution Fund. Moneys allocated for
39 the 2003–04 fiscal year shall be eligible for expenditure through

1 December 31, 2004. Moneys allocated for the 2008–09 fiscal year
2 shall be eligible for expenditure through December 31, 2009.

3 (l) Notwithstanding any other law, a local government
4 jurisdiction that receives a grant from an Individual Tribal Casino
5 Account shall deposit all funds received in an interest-bearing
6 account and use the interest from those funds only for the purpose
7 of mitigating an impact from a casino. If any portion of the funds
8 in the account is used for any other purpose, the remaining portion
9 shall revert to the Indian Gaming Special Distribution Fund. As a
10 condition of receiving further funds under this section, a local
11 government jurisdiction, upon request of the county, shall
12 demonstrate to the county that all expenditures made from the
13 account have been in compliance with the requirements of this
14 section.

15 SEC. 83. Section 13302 of the Government Code is amended
16 to read:

17 13302. The accounting system devised as provided in Section
18 13300 shall provide, with respect to the General Fund and other
19 governmental funds, for all of the following:

20 (a) The accrual of expenditures as of the end of each fiscal year
21 on the basis of payables incurred, excluding accrued interest on
22 general obligation bonded indebtedness.

23 (b) (1) The accrual of revenues at the end of the fiscal year if
24 the underlying transaction has occurred as of the last day of the
25 fiscal year, the amount is measurable, and the actual collection
26 will occur either during the current period or after the end of the
27 current period but in time to pay current yearend liabilities.

28 (2) Cash in agency trust accounts within the centralized State
29 Treasury system that is in transit to the State Treasury, accrued
30 interest receivable, and accounts receivable shall be accrued as of
31 the end of each fiscal year.

32 (c) For the purposes of financial reporting, both of the following
33 shall apply:

34 (1) A payable exists when goods or services have been delivered
35 and the state is required to pay for those goods or services, and an
36 encumbrance exists when a valid obligation against an
37 appropriation has been created.

38 (2) All funds appropriated shall be identified as either expended,
39 payable, encumbered (exclusive of payables), or unencumbered,

1 as further defined by the California Fiscal Advisory Board, and
2 the total of these shall equal the total appropriation.

3 (d) (1) Notwithstanding any other law, and except as provided
4 in paragraph (2), payments to employees made through the Uniform
5 State Payroll System as described in Section 12472.5 with an issue
6 date each year of July 1 shall be considered payables incurred in
7 the fiscal year in which the payment is issue dated.

8 (2) Notwithstanding paragraph (1), for purposes of calculating
9 maintenance of effort expenditures under Section 8 of Article XVI
10 of the California Constitution, or for purposes of calculating funds
11 used by a program during the fiscal year, payments made on July
12 1 may be counted towards the prior fiscal year.

13 SEC. 84. Section 15491 of the Government Code is amended
14 to read:

15 15491. (a) The State Allocation Board shall provide for live
16 video and audio transmission of all board meetings and hearings
17 that are open to the public through a technology that is accessible
18 to as large a segment of the public as possible, including, but not
19 limited to, the use of any of the following technologies:

20 (1) Cable, satellite, over-the-air, or any other type of
21 transmission that can be accessed through a television.

22 (2) Web cast.

23 (b) The board shall ensure that any Web cast transmission
24 implemented pursuant to subdivision (a) may be transmitted over
25 and accessed through the K-12 High-Speed Network established
26 pursuant to paragraph (2) of subdivision (b) of Section 11800 of
27 the Education Code.

28 (c) The board shall consult with the State Chief Information
29 Officer for the purposes of implementing this section pursuant to
30 the duties that the State Chief Information Officer is required to
31 perform, as described in Section 11545.

32 SEC. 85. Section 15820.911 of the Government Code is
33 amended to read:

34 15820.911. (a) The Department of Corrections and
35 Rehabilitation, a participating county, and the board are authorized
36 to acquire, design, and construct a local jail facility approved by
37 the Corrections Standards Authority pursuant to Section 15820.916,
38 or a site or sites owned by, or subject to a lease or option to
39 purchase held by, a participating county. The ownership interest
40 of a participating county in the site or sites for a local jail facility

1 must be determined by the board to be adequate for purposes of
2 its financing in order to be eligible under this chapter.

3 (b) Notwithstanding Section 15815, a participating county may
4 acquire, design, or construct the local jail facility in accordance
5 with its local contracting authority. Notwithstanding Section 14951,
6 the participating county may assign an inspector during the
7 construction of the project.

8 (c) The department, a participating county, and the board shall
9 enter into a construction agreement for these projects that shall
10 provide, at a minimum, performance expectations of the parties
11 related to the acquisition, design, construction, or renovation of
12 the local jail facility; guidelines and criteria for use and application
13 of the proceeds of revenue bonds, notes, or bond anticipation notes
14 issued by the board to pay for the cost of the approved local jail
15 facility project; and ongoing maintenance and staffing
16 responsibilities for the term of the financing.

17 (d) The construction agreement shall include a provision that
18 the participating county agrees to indemnify, defend, and save
19 harmless the State of California for any and all claims and losses
20 arising out of the acquisition, design, and construction of the
21 project. The construction agreement may also contain additional
22 terms and conditions that facilitate the financing by the board.

23 (e) The scope and cost of these approved local jail facility
24 projects shall be subject to approval and administrative oversight
25 by the board.

26 (f) For purposes of compliance with the California
27 Environmental Quality Act (Division 13 (commencing with Section
28 21000) of the Public Resources Code), neither the board nor the
29 department shall be deemed a lead or responsible agency; the
30 participating county is the lead agency.

31 SEC. 86. Section 16724.5 of the Government Code is amended
32 to read:

33 16724.5. (a) For purposes of this section, “revolving fund”
34 means the General Obligation Bond Expense Revolving Fund
35 created pursuant to this section.

36 (b) There is in the State Treasury the General Obligation Bond
37 Expense Revolving Fund, which shall consist of all moneys
38 appropriated by the Legislature into that fund or payable into that
39 fund in accordance with this section.

(c) All moneys in the revolving fund are hereby appropriated and shall be available without regard to fiscal years for all of the following:

(1) The payment of the expenses incurred by the Treasurer in having the bonds prepared and in advertising their sale or their prior redemption, and of the other costs described in subdivision (e) of Section 16727.

(2) For expenses incurred by the committee pursuant to Section 16758.

(3) For payment for legal services pursuant to Section 16760.

(d) Whenever bonds are sold, out of the first moneys realized from their sale, there shall be redeposited in the revolving fund the sums that have been expended for the purposes specified in subdivision (c), which may be used for the same purposes and repaid in the same manner whenever additional sales are made.

SEC. 87. Section 16731.6 of the Government Code is amended to read:

16731.6. (a) Notwithstanding any other provision of this chapter, and as an alternative to the procedures set forth in Section 16731, the committee may provide for the issuance of all or part of the bonds authorized to be issued as commercial paper notes. The committee shall adopt a resolution finding that issuance of the bonds in the form of commercial paper notes is necessary and desirable, directing the Treasurer to arrange for preparation of the requisite number of suitable notes, and specifying other provisions relating to the commercial paper notes, including all of the following:

(1) For each program of commercial paper notes authorized, the resolution shall contain the final date of maturity and the total aggregate principal amount of the commercial paper notes authorized to be outstanding at any one time up to the maturity date, in accordance with all of the following:

(A) The resolution may provide that the commercial paper notes may be issued and renewed from time to time until the final maturity date, and that the amount issued from time to time may be set by the Treasurer up to the maximum amount authorized to be outstanding at any one time.

(B) The resolution shall include methods of setting the dates, numbers, and denominations of the commercial paper notes.

1 (C) The determination of the final maturity date and total amount
2 by the committee shall be made upon recommendation of the
3 Treasurer to meet the needs of the state for funds, to provide the
4 maximum benefit to potential purchasers, and to respond to the
5 expected demand for the commercial paper notes.

6 (D) Notwithstanding any other provision of this chapter,
7 whenever the committee determines to issue commercial paper
8 notes, the committee is not required to comply with the
9 requirements of Section 16732.

10 (2) The method of setting the interest rates and interest payment
11 dates applicable to the commercial paper notes, in accordance with
12 the following:

13 (A) Commercial paper notes may bear a stated rate of interest
14 payable only at maturity, which rate or rates may be determined
15 at the time of sale of each unit of commercial paper notes.

16 (B) The rate of interest borne by the commercial paper notes
17 shall not exceed 11 percent per annum.

18 (C) Notwithstanding any other provision of this chapter,
19 whenever the committee determines to issue commercial paper
20 notes, the committee is not required to comply with the
21 requirements of Section 16733.

22 (3) Any provisions for the redemption of the commercial paper
23 notes prior to stated maturity.

24 (4) The technical form and language of the commercial paper
25 notes.

26 (5) All other terms and conditions of the commercial paper notes
27 and of their execution, issuance, and sale, deemed necessary and
28 appropriate by the committee.

29 (b) Notwithstanding any other provision of this chapter, when
30 the committee determines to issue commercial paper notes, all of
31 the following shall apply:

32 (1) The commercial paper notes may be sold at negotiated sale
33 at a price below the par value in a manner consistent with paragraph
34 (2) of subdivision (a).

35 (2) During the term of any program of commercial paper notes,
36 the renewal and reissuance from time to time of the commercial
37 paper notes in an amount up to the maximum amount authorized
38 by the resolution shall be deemed to be a refunding of the
39 previously maturing amount, permitted by and consistent with
40 Article 6 (commencing with Section 16780).

(3) Consistent with the intent for the General Fund to realize a savings in debt service costs when commercial paper notes are issued in place of bonds without shifting or adding financing and debt service costs to the bond funds, the state administrative costs of commercial paper and interest payable and other costs associated with commercial paper notes shall be paid for as follows:

(A) The proceeds of commercial paper notes are, notwithstanding Section 13340, continuously appropriated to pay the state administrative costs of commercial paper including, but not limited to, costs of the Treasurer's office, the Controller's office, and the Department of Finance.

(B) The interest payable on maturing commercial paper notes and other costs associated with commercial paper notes not specified in subparagraph (A), including, but not limited to, remarketing fees, issuing and paying agent fees, the letter or line of credit provider fees, the rating agency fees, and bond counsel fees, shall be paid from the General Fund which, notwithstanding Section 13340, is continuously appropriated to pay the interests and costs.

SEC. 88. Section 22898 of the Government Code is amended to read:

22898. (a) Notwithstanding any other provision of this part, the percentage of employer contribution payable for postretirement health benefits for an employee of the Alameda County Transportation Improvement Authority shall, except as provided in subdivision (b), be based on the employee's completed years of credited service, provided that the Alameda County Transportation Improvement Authority shall not pay an employer contribution for the first five years of that credited service, and shall pay thereafter as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
5.....	50
6.....	55
7.....	60
8.....	65
9.....	70
10.....	75
11.....	80
12.....	85

1	13.....	90
2	14.....	95
3	15.....	100

4

5 The application of this subdivision shall be subject to the
6 following:

7 (1) The employer contribution with respect to each annuitant
8 shall be adjusted by the employer each year. Those adjustments
9 shall be based upon the principle that the employer contribution
10 for each annuitant may not be less than the amount equal to 100
11 percent of the weighted average of the health benefits plan
12 premiums for an employee or annuitant enrolled for self-alone,
13 during the benefit year to which the formula is applied, for the
14 four health benefit plans that had the largest agency enrollment,
15 excluding family members, during the previous benefit year. For
16 each annuitant with enrolled family members, the employer shall
17 not pay an additional contribution.

18 (2) The employer shall certify to the board, in the case of
19 employees not represented by a bargaining unit, that there is not
20 an applicable memorandum of understanding.

21 (3) The credited service of an annuitant for the purpose of
22 determining the percentage of employer contributions applicable
23 under this section shall mean state service as defined in Section
24 20069, except that at least five years of credited service shall have
25 been performed with the Alameda County Transportation
26 Improvement Authority.

27 (4) The employer shall provide the board any information
28 requested that the board determines is necessary to implement this
29 section.

30 (b) Notwithstanding subdivision (a), the contribution payable
31 by the employer subject to this section shall be equal to 100 percent
32 of the amount established pursuant to paragraph (1) of subdivision
33 (a) on behalf of any annuitant who either:

34 (1) Retired for disability.

35 (2) Retired for service with 15 or more years of service credit
36 entirely with that employer, regardless of the number of days after
37 separation from employment. The contribution payable by the
38 employer under this paragraph shall be paid only if it is greater
39 than, and made in lieu of, a contribution payable to the annuitant
40 by another employer under this part. The board shall establish

1 application procedures and eligibility criteria to implement this
2 paragraph.

3 (c) This section applies only to the Alameda County
4 Transportation Improvement Authority, or its successor, and only
5 with regard to the employees of the agency who are first hired on
6 or after October 1, 2004.

7 SEC. 89. Section 25331 of the Government Code is amended
8 to read:

9 25331. It is the intent of the Legislature that the fees or charges
10 authorized by this chapter are for optional services that the public
11 may or may not choose to purchase, and are not taxes for the
12 purposes of Article XIII A of the California Constitution.

13 SEC. 90. Section 31855.9 of the Government Code is amended
14 to read:

15 31855.9. Upon the death of a member prior to retirement who
16 was a member continuously for not less than 18 months
17 immediately prior to the member's death who is survived by a
18 spouse with whom the member was living at the time of his or her
19 death, the retirement system shall pay to the surviving spouse, in
20 addition to all other payments due, if any, a lump sum supplemental
21 survivorship benefit of two hundred fifty-five dollars (\$255), as
22 set forth in Section 31855.8 or 31855.12. If the member is not
23 survived by a spouse with whom the member was living, the
24 retirement system shall apply a lump sum supplemental
25 survivorship benefit to reimburse the person who paid the funeral
26 expenses of the member in an amount not to exceed two hundred
27 fifty-five dollars (\$255).

28 SEC. 91. Section 53601 of the Government Code is amended
29 to read:

30 53601. This section shall apply to a local agency that is a city,
31 a district, or other local agency that does not pool money in
32 deposits or investments with other local agencies, other than local
33 agencies that have the same governing body. However, Section
34 53635 shall apply to all local agencies that pool money in deposits
35 or investments with other local agencies that have separate
36 governing bodies. The legislative body of a local agency having
37 moneys in a sinking fund or moneys in its treasury not required
38 for the immediate needs of the local agency may invest any portion
39 of the moneys that it deems wise or expedient in those investments
40 set forth below. A local agency purchasing or obtaining any

securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery.

For purposes of this section, "counterparty" means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Registered treasury notes or bonds of any of the other 49 United States in addition to California, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board,

1 agency, or authority of any of the other 49 United States, in
2 addition to California.

3 (e) Bonds, notes, warrants, or other evidences of indebtedness
4 of a local agency within this state, including bonds payable solely
5 out of the revenues from a revenue-producing property owned,
6 controlled, or operated by the local agency, or by a department,
7 board, agency, or authority of the local agency.

8 (f) Federal agency or United States government-sponsored
9 enterprise obligations, participations, or other instruments,
10 including those issued by or fully guaranteed as to principal and
11 interest by federal agencies or United States government-sponsored
12 enterprises.

13 (g) Bankers' acceptances otherwise known as bills of exchange
14 or time drafts that are drawn on and accepted by a commercial
15 bank. Purchases of bankers' acceptances shall not exceed 180
16 days' maturity or 40 percent of the agency's moneys that may be
17 invested pursuant to this section. However, no more than 30 percent
18 of the agency's moneys may be invested in the bankers'
19 acceptances of any one commercial bank pursuant to this section.

20 This subdivision does not preclude a municipal utility district
21 from investing moneys in its treasury in a manner authorized by
22 the Municipal Utility District Act (Division 6 (commencing with
23 Section 11501) of the Public Utilities Code).

24 (h) Commercial paper of "prime" quality of the highest ranking
25 or of the highest letter and number rating as provided for by a
26 nationally recognized statistical rating organization (NRSRO).
27 The entity that issues the commercial paper shall meet all of the
28 following conditions in either paragraph (1) or (2):

29 (1) The entity meets the following criteria:

30 (A) Is organized and operating in the United States as a general
31 corporation.

32 (B) Has total assets in excess of five hundred million dollars
33 (\$500,000,000).

34 (C) Has debt other than commercial paper, if any, that is rated
35 "A" or higher by an NRSRO.

36 (2) The entity meets the following criteria:

37 (A) Is organized within the United States as a special purpose
38 corporation, trust, or limited liability company.

39 (B) Has programwide credit enhancements including, but not
40 limited to, overcollateralization, letters of credit, or a surety bond.

1 (C) Has commercial paper that is rated “A-1” or higher, or the
2 equivalent, by an NRSRO.

3 Eligible commercial paper shall have a maximum maturity of
4 270 days or less. Local agencies, other than counties or a city and
5 county, may invest no more than 25 percent of their moneys in
6 eligible commercial paper. Local agencies, other than counties or
7 a city and county, may purchase no more than 10 percent of the
8 outstanding commercial paper of any single issuer. Counties or a
9 city and county may invest in commercial paper pursuant to the
10 concentration limits in subdivision (a) of Section 53635.

11 (i) Negotiable certificates of deposit issued by a nationally or
12 state-chartered bank, a savings association or a federal association
13 (as defined by Section 5102 of the Financial Code), a state or
14 federal credit union, or by a state-licensed branch of a foreign
15 bank. Purchases of negotiable certificates of deposit shall not
16 exceed 30 percent of the agency’s moneys that may be invested
17 pursuant to this section. For purposes of this section, negotiable
18 certificates of deposit do not come within Article 2 (commencing
19 with Section 53630), except that the amount so invested shall be
20 subject to the limitations of Section 53638. The legislative body
21 of a local agency and the treasurer or other official of the local
22 agency having legal custody of the moneys are prohibited from
23 investing local agency funds, or funds in the custody of the local
24 agency, in negotiable certificates of deposit issued by a state or
25 federal credit union if a member of the legislative body of the local
26 agency, or a person with investment decisionmaking authority in
27 the administrative office manager’s office, budget office,
28 auditor-controller’s office, or treasurer’s office of the local agency
29 also serves on the board of directors, or any committee appointed
30 by the board of directors, or the credit committee or the supervisory
31 committee of the state or federal credit union issuing the negotiable
32 certificates of deposit.

33 (j) (1) Investments in repurchase agreements or reverse
34 repurchase agreements or securities lending agreements of
35 securities authorized by this section, as long as the agreements are
36 subject to this subdivision, including the delivery requirements
37 specified in this section.

38 (2) Investments in repurchase agreements may be made, on an
39 investment authorized in this section, when the term of the
40 agreement does not exceed one year. The market value of securities

1 that underlie a repurchase agreement shall be valued at 102 percent
2 or greater of the funds borrowed against those securities and the
3 value shall be adjusted no less than quarterly. Since the market
4 value of the underlying securities is subject to daily market
5 fluctuations, the investments in repurchase agreements shall be in
6 compliance if the value of the underlying securities is brought back
7 up to 102 percent no later than the next business day.

8 (3) Reverse repurchase agreements or securities lending
9 agreements may be utilized only when all of the following
10 conditions are met:

11 (A) The security to be sold using a reverse repurchase agreement
12 or securities lending agreement has been owned and fully paid for
13 by the local agency for a minimum of 30 days prior to sale.

14 (B) The total of all reverse repurchase agreements and securities
15 lending agreements on investments owned by the local agency
16 does not exceed 20 percent of the base value of the portfolio.

17 (C) The agreement does not exceed a term of 92 days, unless
18 the agreement includes a written codicil guaranteeing a minimum
19 earning or spread for the entire period between the sale of a security
20 using a reverse repurchase agreement or securities lending
21 agreement and the final maturity date of the same security.

22 (D) Funds obtained or funds within the pool of an equivalent
23 amount to that obtained from selling a security to a counterparty
24 using a reverse repurchase agreement or securities lending
25 agreement shall not be used to purchase another security with a
26 maturity longer than 92 days from the initial settlement date of the
27 reverse repurchase agreement or securities lending agreement,
28 unless the reverse repurchase agreement or securities lending
29 agreement includes a written codicil guaranteeing a minimum
30 earning or spread for the entire period between the sale of a security
31 using a reverse repurchase agreement or securities lending
32 agreement and the final maturity date of the same security.

33 (4) (A) Investments in reverse repurchase agreements, securities
34 lending agreements, or similar investments in which the local
35 agency sells securities prior to purchase with a simultaneous
36 agreement to repurchase the security may be made only upon prior
37 approval of the governing body of the local agency and shall be
38 made only with primary dealers of the Federal Reserve Bank of
39 New York or with a nationally or state-chartered bank that has or
40 has had a significant banking relationship with a local agency.

1 (B) For purposes of this chapter, “significant banking
2 relationship” means any of the following activities of a bank:

3 (i) Involvement in the creation, sale, purchase, or retirement of
4 a local agency’s bonds, warrants, notes, or other evidence of
5 indebtedness.

6 (ii) Financing of a local agency’s activities.

7 (iii) Acceptance of a local agency’s securities or funds as
8 deposits.

9 (5) (A) “Repurchase agreement” means a purchase of securities
10 by the local agency pursuant to an agreement by which the
11 counterparty seller will repurchase the securities on or before a
12 specified date and for a specified amount and the counterparty will
13 deliver the underlying securities to the local agency by book entry,
14 physical delivery, or by third-party custodial agreement. The
15 transfer of underlying securities to the counterparty bank’s
16 customer book-entry account may be used for book-entry delivery.

17 (B) “Securities,” for purposes of repurchase under this
18 subdivision, means securities of the same issuer, description, issue
19 date, and maturity.

20 (C) “Reverse repurchase agreement” means a sale of securities
21 by the local agency pursuant to an agreement by which the local
22 agency will repurchase the securities on or before a specified date
23 and includes other comparable agreements.

24 (D) “Securities lending agreement” means an agreement under
25 which a local agency agrees to transfer securities to a borrower
26 who, in turn, agrees to provide collateral to the local agency.
27 During the term of the agreement, both the securities and the
28 collateral are held by a third party. At the conclusion of the
29 agreement, the securities are transferred back to the local agency
30 in return for the collateral.

31 (E) For purposes of this section, the base value of the local
32 agency’s pool portfolio shall be that dollar amount obtained by
33 totaling all cash balances placed in the pool by all pool participants,
34 excluding any amounts obtained through selling securities by way
35 of reverse repurchase agreements, securities lending agreements,
36 or other similar borrowing methods.

37 (F) For purposes of this section, the spread is the difference
38 between the cost of funds obtained using the reverse repurchase
39 agreement and the earnings obtained on the reinvestment of the
40 funds.

(k) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated “A” or better by an NRSRO. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency’s moneys that may be invested pursuant to this section.

(l) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company’s board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two NRSROs.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years’ experience investing in the securities and obligations authorized by subdivisions (a) to (k), inclusive, and subdivisions (m) to (o), inclusive, and with assets under management in excess of five hundred million dollars (\$500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

1 (A) Attained the highest ranking or the highest letter and
2 numerical rating provided by not less than two NRSROs.

3 (B) Retained an investment adviser registered or exempt from
4 registration with the Securities and Exchange Commission with
5 not less than five years' experience managing money market
6 mutual funds with assets under management in excess of five
7 hundred million dollars (\$500,000,000).

8 (5) The purchase price of shares of beneficial interest purchased
9 pursuant to this subdivision shall not include commission that the
10 companies may charge and shall not exceed 20 percent of the
11 agency's moneys that may be invested pursuant to this section.
12 However, no more than 10 percent of the agency's funds may be
13 invested in shares of beneficial interest of any one mutual fund
14 pursuant to paragraph (1).

15 (m) Moneys held by a trustee or fiscal agent and pledged to the
16 payment or security of bonds or other indebtedness, or obligations
17 under a lease, installment sale, or other agreement of a local
18 agency, or certificates of participation in those bonds, indebtedness,
19 or lease installment sale, or other agreements, may be invested in
20 accordance with the statutory provisions governing the issuance
21 of those bonds, indebtedness, or lease installment sale, or other
22 agreement, or to the extent not inconsistent therewith or if there
23 are no specific statutory provisions, in accordance with the
24 ordinance, resolution, indenture, or agreement of the local agency
25 providing for the issuance.

26 (n) Notes, bonds, or other obligations that are at all times secured
27 by a valid first priority security interest in securities of the types
28 listed by Section 53651 as eligible securities for the purpose of
29 securing local agency deposits having a market value at least equal
30 to that required by Section 53652 for the purpose of securing local
31 agency deposits. The securities serving as collateral shall be placed
32 by delivery or book entry into the custody of a trust company or
33 the trust department of a bank that is not affiliated with the issuer
34 of the secured obligation, and the security interest shall be perfected
35 in accordance with the requirements of the Uniform Commercial
36 Code or federal regulations applicable to the types of securities in
37 which the security interest is granted.

38 (o) A mortgage passthrough security, collateralized mortgage
39 obligation, mortgage-backed or other pay-through bond, equipment
40 lease-backed certificate, consumer receivable passthrough

1 certificate, or consumer receivable-backed bond of a maximum of
2 five years' maturity. Securities eligible for investment under this
3 subdivision shall be issued by an issuer having an "A" or higher
4 rating for the issuer's debt as provided by an NRSRO and rated in
5 a rating category of "AA" or its equivalent or better by an NRSRO.
6 Purchase of securities authorized by this subdivision may not
7 exceed 20 percent of the agency's surplus moneys that may be
8 invested pursuant to this section.

9 (p) Shares of beneficial interest issued by a joint powers
10 authority organized pursuant to Section 6509.7 that invests in the
11 securities and obligations authorized in subdivisions (a) to (o),
12 inclusive. Each share shall represent an equal proportional interest
13 in the underlying pool of securities owned by the joint powers
14 authority. To be eligible under this section, the joint powers
15 authority issuing the shares shall have retained an investment
16 adviser that meets all of the following criteria:

17 (1) The adviser is registered or exempt from registration with
18 the Securities and Exchange Commission.

19 (2) The adviser has not less than five years of experience
20 investing in the securities and obligations authorized in
21 subdivisions (a) to (o), inclusive.

22 (3) The adviser has assets under management in excess of five
23 hundred million dollars (\$500,000,000).

24 SEC. 92. Section 56375.2 of the Government Code is amended
25 to read:

26 56375.2. (a) In addition to those powers enumerated in Section
27 56375, the Marin Local Agency Formation Commission may
28 initiate and approve, after notice and hearing, a reorganization or
29 consolidation of the Sewerage Agency of Southern Marin and its
30 member districts, without protest hearings.

31 (b) If the commission initiates and approves the reorganization
32 or consolidation pursuant to subdivision (a), the commission may
33 impose terms and conditions on the reorganization or consolidation
34 that would require the Sewerage Agency of Southern Marin and
35 its member agencies to be responsible for payment of the
36 commission's costs incurred in association with the reorganization
37 or consolidation.

38 (c) This section shall become effective on January 1, 2011.

39 SEC. 93. Section 56668 of the Government Code is amended
40 to read:

1 56668. Factors to be considered in the review of a proposal
2 shall include, but not be limited to, all of the following:

3 (a) Population and population density; land area and land use;
4 per capita assessed valuation; topography, natural boundaries, and
5 drainage basins; proximity to other populated areas; the likelihood
6 of significant growth in the area, and in adjacent incorporated and
7 unincorporated areas, during the next 10 years.

8 (b) The need for organized community services; the present
9 cost and adequacy of governmental services and controls in the
10 area; probable future needs for those services and controls; probable
11 effect of the proposed incorporation, formation, annexation, or
12 exclusion and of alternative courses of action on the cost and
13 adequacy of services and controls in the area and adjacent areas.

14 “Services,” as used in this subdivision, refers to governmental
15 services whether or not the services are services which would be
16 provided by local agencies subject to this division, and includes
17 the public facilities necessary to provide those services.

18 (c) The effect of the proposed action and of alternative actions,
19 on adjacent areas, on mutual social and economic interests, and
20 on the local governmental structure of the county.

21 (d) The conformity of both the proposal and its anticipated
22 effects with both the adopted commission policies on providing
23 planned, orderly, efficient patterns of urban development, and the
24 policies and priorities in Section 56377.

25 (e) The effect of the proposal on maintaining the physical and
26 economic integrity of agricultural lands, as defined by Section
27 56016.

28 (f) The definiteness and certainty of the boundaries of the
29 territory, the nonconformance of proposed boundaries with lines
30 of assessment or ownership, the creation of islands or corridors of
31 unincorporated territory, and other similar matters affecting the
32 proposed boundaries.

33 (g) A regional transportation plan adopted pursuant to Section
34 65080, and its consistency with city or county general and specific
35 plans.

36 (h) The sphere of influence of any local agency which may be
37 applicable to the proposal being reviewed.

38 (i) The comments of any affected local agency or other public
39 agency.

1 (j) The ability of the newly formed or receiving entity to provide
2 the services which are the subject of the application to the area,
3 including the sufficiency of revenues for those services following
4 the proposed boundary change.

5 (k) Timely availability of water supplies adequate for projected
6 needs as specified in Section 65352.5.

7 (l) The extent to which the proposal will affect a city or cities
8 and the county in achieving their respective fair shares of the
9 regional housing needs as determined by the appropriate council
10 of governments consistent with Article 10.6 (commencing with
11 Section 65580) of Chapter 3 of Division 1 of Title 7.

12 (m) Any information or comments from the landowner or
13 owners, voters, or residents of the affected territory.

14 (n) Any information relating to existing land use designations.

15 (o) The extent to which the proposal will promote environmental
16 justice. As used in this subdivision, “environmental justice” means
17 the fair treatment of people of all races, cultures, and incomes with
18 respect to the location of public facilities and the provision of
19 public services.

20 SEC. 94. Section 63049.62 of the Government Code is amended
21 to read:

22 63049.62. Notwithstanding any other provision of this division,
23 a financing of the costs of claims of insolvent insurers upon the
24 request of the association pursuant to Section 1063.73 of the
25 Insurance Code shall be deemed to be in the public interest and
26 eligible for financing by the bank, and Article 3 (commencing with
27 Section 63040), Article 4 (commencing with Section 63042),
28 Article 5 (commencing with Section 63043), Article 6
29 (commencing with Section 63048), and Article 7 (commencing
30 with Section 63049) shall not apply to the financing provided by
31 the bank to, or at the request of, the association or the department
32 in connection with the fund. Notwithstanding any other provision
33 of this division, the bank shall have no authority over any matter
34 that is subject to the approval of the Insurance Commissioner under
35 Article 14.2 (commencing with Section 1063) of Chapter 1 of Part
36 2 of Division 1 of the Insurance Code.

37 SEC. 94.5. Section 63049.67 of the Government Code is
38 amended to read:

39 63049.67. (a) Notwithstanding any other provision of this
40 division, a financing of emergency apportionments upon the request

1 of a school district pursuant to Article 2.7 (commencing with
2 Section 41329.50) of Chapter 3 of Part 24 of Division 3 of Title
3 2 of the Education Code, is deemed to be in the public interest and
4 eligible for financing by the bank. Article 3 (commencing with
5 Section 63040), Article 4 (commencing with Section 63042) and
6 Article 5 (commencing with Section 63043) do not apply to the
7 financing provided by the bank in connection with an emergency
8 apportionment.

9 (b) The bank may issue bonds pursuant to Chapter 5
10 (commencing with Section 63070) and provide the proceeds to a
11 school district pursuant to a lease agreement. The proceeds may
12 be used as an emergency apportionment, to reimburse the interim
13 emergency apportionment from the General Fund authorized
14 pursuant to subdivision (b) of Section 41329.52 of the Education
15 Code, or to refund bonds previously issued under this section.
16 Bond proceeds may also be used to fund necessary reserves,
17 capitalized interest, credit enhancement costs, and costs of issuance.

18 (c) Bonds issued under this article are not deemed to constitute
19 a debt or liability of the state or of any political subdivision of the
20 state, other than a limited obligation of the bank, or a pledge of
21 the faith and credit of the state or of any political subdivision. All
22 bonds issued under this article shall contain on the face of the
23 bonds a statement to the same effect.

24 (d) Any fund or account established in connection with the
25 bonds shall be established outside of the centralized treasury
26 system. Notwithstanding any other law, the bank shall select the
27 financing team and the trustee for the bonds, and the trustee shall
28 be a corporation or banking association authorized to exercise
29 corporate trust powers.

30 (e) Pursuant to Section 41329.55 of the Education Code, a school
31 district other than the Compton Community College District shall
32 instruct the Controller to repay the lease from moneys in the State
33 School Fund designated for apportionment to the school district.
34 Pursuant to Section 41329.55, if the school district is the Compton
35 Community College District, the Controller shall be instructed to
36 repay the lease from moneys in Section B of the State School Fund.
37 Any amounts necessary to make this repayment shall be drawn
38 from the total statewide funding available for community college
39 apportionment consisting of funds in Section B of the State School
40 Fund. Thereafter the Controller shall transfer to Section B of the

1 State School Fund, either in a single or multiple transfers, an
2 amount equal to the total repayment, which amount shall be
3 transferred from the amount designated for apportionment to the
4 Compton Community College District from the State School Fund.
5 If these transfers from the district prove inadequate to repay any
6 repayments for any reason, the Compton Community College
7 District is required to use any revenue sources available to it for
8 transfer and repayment purposes.

9 (f) Notwithstanding any other law, as long as any bonds issued
10 pursuant to this section are outstanding, the following requirements
11 apply:

12 (1) The school district for which the bonds were issued is not
13 eligible to be a debtor in a case under Chapter 9 of the United
14 States Bankruptcy Code, as it may be amended from time to time,
15 and no governmental officer or organization is or may be
16 empowered to authorize the school district to be a debtor under
17 that chapter.

18 (2) It is the intent of the Legislature that the Legislature should
19 not in the future abolish the Compton Community College District
20 or take any action that would prevent the Compton Community
21 College from entering into or performing binding agreements or
22 invalidate any prior binding agreements of the Compton
23 Community College District, where invalidation may have a
24 material adverse effect on the bonds issued pursuant to this section.

25 (3) The Compton Community College District shall not be
26 reorganized or merged with another community college district
27 unless all of the following apply:

28 (A) The successor district becomes by operation of law the
29 owner of all property previously owned by the Compton
30 Community College District.

31 (B) Any agreement entered into by the Compton Community
32 College District in connection with bonds issued pursuant to this
33 section are assumed by the successor district.

34 (C) The apportionment authorized by subdivision (e) remains
35 in effect.

36 (D) Receipt by the bank of an opinion of bond counsel that the
37 bonds issued for the Compton Community College District will
38 remain tax exempt following the reorganization or merger.

39 (g) Nothing in this section limits the authority of the Legislature
40 to abolish the Compton Community College District when bonds

1 issued for that district are no longer outstanding. Further, the
2 Legislature may provide for the redemption or defeasance of the
3 bonds at any time so that no bonds are outstanding. If the
4 Legislature provides for the redemption or defeasance of the bonds
5 issued for the Compton Community College District in order to
6 abolish that district, it is the intent of the Legislature that the funds
7 required for the redemption or defeasance should be appropriated
8 from Section B of the State School Fund.

9 (h) The bank may enter into contracts or agreements with banks,
10 insurers, or other financial institutions or parties that it determines
11 are necessary or desirable to improve the security and marketability
12 of, or to manage interest rates or other risks associated with, the
13 bonds issued pursuant to this section. The bank may pledge
14 apportionments made by the Controller directly to the bond trustee
15 pursuant to Section 41329.55 of the Education Code as security
16 for repayment of any obligation owed to a bank, insurer, or other
17 financial institution pursuant to this subdivision.

18 SEC. 95. Section 65080 of the Government Code is amended
19 to read:

20 65080. (a) Each transportation planning agency designated
21 under Section 29532 or 29532.1 shall prepare and adopt a regional
22 transportation plan directed at achieving a coordinated and balanced
23 regional transportation system, including, but not limited to, mass
24 transportation, highway, railroad, maritime, bicycle, pedestrian,
25 goods movement, and aviation facilities and services. The plan
26 shall be action-oriented and pragmatic, considering both the
27 short-term and long-term future, and shall present clear, concise
28 policy guidance to local and state officials. The regional
29 transportation plan shall consider factors specified in Section 134
30 of Title 23 of the United States Code. Each transportation planning
31 agency shall consider and incorporate, as appropriate, the
32 transportation plans of cities, counties, districts, private
33 organizations, and state and federal agencies.

34 (b) The regional transportation plan shall be an internally
35 consistent document and shall include all of the following:

36 (1) A policy element that describes the transportation issues in
37 the region, identifies and quantifies regional needs, and describes
38 the desired short-range and long-range transportation goals, and
39 pragmatic objective and policy statements. The objective and policy
40 statements shall be consistent with the funding estimates of the

1 financial element. The policy element of transportation planning
2 agencies with populations that exceed 200,000 persons may
3 quantify a set of indicators including, but not limited to, all of the
4 following:

5 (A) Measures of mobility and traffic congestion, including, but
6 not limited to, daily vehicle hours of delay per capita and vehicle
7 miles traveled per capita.

8 (B) Measures of road and bridge maintenance and rehabilitation
9 needs, including, but not limited to, roadway pavement and bridge
10 conditions.

11 (C) Measures of means of travel, including, but not limited to,
12 percentage share of all trips (work and nonwork) made by all of
13 the following:

14 (i) Single occupant vehicle.

15 (ii) Multiple occupant vehicle or carpool.

16 (iii) Public transit including commuter rail and intercity rail.

17 (iv) Walking.

18 (v) Bicycling.

19 (D) Measures of safety and security, including, but not limited
20 to, total injuries and fatalities assigned to each of the modes set
21 forth in subparagraph (C).

22 (E) Measures of equity and accessibility, including, but not
23 limited to, percentage of the population served by frequent and
24 reliable public transit, with a breakdown by income bracket, and
25 percentage of all jobs accessible by frequent and reliable public
26 transit service, with a breakdown by income bracket.

27 (F) The requirements of this section may be met utilizing
28 existing sources of information. No additional traffic counts,
29 household surveys, or other sources of data shall be required.

30 (2) A sustainable communities strategy prepared by each
31 metropolitan planning organization as follows:

32 (A) No later than September 30, 2010, the State Air Resources
33 Board shall provide each affected region with greenhouse gas
34 emission reduction targets for the automobile and light truck sector
35 for 2020 and 2035, respectively.

36 (i) No later than January 31, 2009, the state board shall appoint
37 a Regional Targets Advisory Committee to recommend factors to
38 be considered and methodologies to be used for setting greenhouse
39 gas emission reduction targets for the affected regions. The
40 committee shall be composed of representatives of the metropolitan

1 planning organizations, affected air districts, the League of
 2 California Cities, the California State Association of Counties,
 3 local transportation agencies, and members of the public, including
 4 homebuilders, environmental organizations, planning organizations,
 5 environmental justice organizations, affordable housing
 6 organizations, and others. The advisory committee shall transmit
 7 a report with its recommendations to the state board no later than
 8 September 30, 2009. In recommending factors to be considered
 9 and methodologies to be used, the advisory committee may
 10 consider any relevant issues, including, but not limited to, data
 11 needs, modeling techniques, growth forecasts, the impacts of
 12 regional jobs-housing balance on interregional travel and
 13 greenhouse gas emissions, economic and demographic trends, the
 14 magnitude of greenhouse gas reduction benefits from a variety of
 15 land use and transportation strategies, and appropriate methods to
 16 describe regional targets and to monitor performance in attaining
 17 those targets. The state board shall consider the report prior to
 18 setting the targets.

19 (ii) Prior to setting the targets for a region, the state board shall
 20 exchange technical information with the metropolitan planning
 21 organization and the affected air district. The metropolitan planning
 22 organization may recommend a target for the region. The
 23 metropolitan planning organization shall hold at least one public
 24 workshop within the region after receipt of the report from the
 25 advisory committee. The state board shall release draft targets for
 26 each region no later than June 30, 2010.

27 (iii) In establishing these targets, the state board shall take into
 28 account greenhouse gas emission reductions that will be achieved
 29 by improved vehicle emission standards, changes in fuel
 30 composition, and other measures it has approved that will reduce
 31 greenhouse gas emissions in the affected regions, and prospective
 32 measures the state board plans to adopt to reduce greenhouse gas
 33 emissions from other greenhouse gas emission sources as that term
 34 is defined in subdivision (i) of Section 38505 of the Health and
 35 Safety Code and consistent with the regulations promulgated
 36 pursuant to the California Global Warming Solutions Act of 2006
 37 (Division 25.5 (commencing with Section 38500) of the Health
 38 and Safety Code).

39 (iv) The state board shall update the regional greenhouse gas
 40 emission reduction targets every eight years consistent with each

1 metropolitan planning organization's timeframe for updating its
2 regional transportation plan under federal law until 2050. The state
3 board may revise the targets every four years based on changes in
4 the factors considered under clause (iii). The state board shall
5 exchange technical information with the Department of
6 Transportation, metropolitan planning organizations, local
7 governments, and affected air districts and engage in a consultative
8 process with public and private stakeholders prior to updating these
9 targets.

10 (v) The greenhouse gas emission reduction targets may be
11 expressed in gross tons, tons per capita, tons per household, or in
12 any other metric deemed appropriate by the state board.

13 (B) Each metropolitan planning organization shall prepare a
14 sustainable communities strategy, subject to the requirements of
15 Part 450 of Title 23 of, and Part 93 of Title 40 of, the Code of
16 Federal Regulations, including the requirement to utilize the most
17 recent planning assumptions considering local general plans and
18 other factors. The sustainable communities strategy shall (i)
19 identify the general location of uses, residential densities, and
20 building intensities within the region, (ii) identify areas within the
21 region sufficient to house all the population of the region, including
22 all economic segments of the population, over the course of the
23 planning period of the regional transportation plan taking into
24 account net migration into the region, population growth, household
25 formation and employment growth, (iii) identify areas within the
26 region sufficient to house an eight-year projection of the regional
27 housing need for the region pursuant to Section 65584, (iv) identify
28 a transportation network to service the transportation needs of the
29 region, (v) gather and consider the best practically available
30 scientific information regarding resource areas and farmland in
31 the region as defined in subdivisions (a) and (b) of Section
32 65080.01, (vi) consider the state housing goals specified in Sections
33 65580 and 65581, (vii) set forth a forecasted development pattern
34 for the region, which, when integrated with the transportation
35 network, and other transportation measures and policies, will
36 reduce the greenhouse gas emissions from automobiles and light
37 trucks to achieve, if there is a feasible way to do so, the greenhouse
38 gas emission reduction targets approved by the state board, and
39 (viii) allow the regional transportation plan to comply with Section
40 176 of the federal Clean Air Act (42 U.S.C. Sec. 7506).

1 (C) (i) Within the jurisdiction of the Metropolitan
2 Transportation Commission, as defined by Section 66502, the
3 Association of Bay Area Governments shall be responsible for
4 clauses (i), (ii), (iii), (v), and (vi) of subparagraph (B), the
5 Metropolitan Transportation Commission shall be responsible for
6 clauses (iv) and (viii) of subparagraph (B); and the Association of
7 Bay Area Governments and the Metropolitan Transportation
8 Commission shall jointly be responsible for clause (vii) of
9 subparagraph (B).

10 (ii) Within the jurisdiction of the Tahoe Regional Planning
11 Agency, as defined in Sections 66800 and 66801, the Tahoe
12 Metropolitan Planning Organization shall use the Regional Plan
13 for the Lake Tahoe Region as the sustainable community strategy,
14 provided that it complies with clauses (vii) and (viii) of
15 subparagraph (B).

16 (D) In the region served by the multicounty transportation
17 planning agency described in Section 130004 of the Public Utilities
18 Code, a subregional council of governments and the county
19 transportation commission may work together to propose the
20 sustainable communities strategy and an alternative planning
21 strategy, if one is prepared pursuant to subparagraph (I), for that
22 subregional area. The metropolitan planning organization may
23 adopt a framework for a subregional sustainable communities
24 strategy or a subregional alternative planning strategy to address
25 the intraregional land use, transportation, economic, air quality,
26 and climate policy relationships. The metropolitan planning
27 organization shall include the subregional sustainable communities
28 strategy for that subregion in the regional sustainable communities
29 strategy to the extent consistent with this section and federal law
30 and approve the subregional alternative planning strategy, if one
31 is prepared pursuant to subparagraph (I), for that subregional area
32 to the extent consistent with this section. The metropolitan planning
33 organization shall develop overall guidelines, create public
34 participation plans pursuant to subparagraph (F), ensure
35 coordination, resolve conflicts, make sure that the overall plan
36 complies with applicable legal requirements, and adopt the plan
37 for the region.

38 (E) The metropolitan planning organization shall conduct at
39 least two informational meetings in each county within the region
40 for members of the board of supervisors and city councils on the

1 sustainable communities strategy and alternative planning strategy,
2 if any. The metropolitan planning organization may conduct only
3 one informational meeting if it is attended by representatives of
4 the county board of supervisors and city council members
5 representing a majority of the cities representing a majority of the
6 population in the incorporated areas of that county. Notice of the
7 meeting or meetings shall be sent to the clerk of the board of
8 supervisors and to each city clerk. The purpose of the meeting or
9 meetings shall be to discuss the sustainable communities strategy
10 and the alternative planning strategy, if any, including the key land
11 use and planning assumptions to the members of the board of
12 supervisors and the city council members in that county and to
13 solicit and consider their input and recommendations.

14 (F) Each metropolitan planning organization shall adopt a public
15 participation plan, for development of the sustainable communities
16 strategy and an alternative planning strategy, if any, that includes
17 all of the following:

18 (i) Outreach efforts to encourage the active participation of a
19 broad range of stakeholder groups in the planning process,
20 consistent with the agency's adopted Federal Public Participation
21 Plan, including, but not limited to, affordable housing advocates,
22 transportation advocates, neighborhood and community groups,
23 environmental advocates, home builder representatives,
24 broad-based business organizations, landowners, commercial
25 property interests, and homeowner associations.

26 (ii) Consultation with congestion management agencies,
27 transportation agencies, and transportation commissions.

28 (iii) Workshops throughout the region to provide the public with
29 the information and tools necessary to provide a clear
30 understanding of the issues and policy choices. At least one
31 workshop shall be held in each county in the region. For counties
32 with a population greater than 500,000, at least three workshops
33 shall be held. Each workshop, to the extent practicable, shall
34 include urban simulation computer modeling to create visual
35 representations of the sustainable communities strategy and the
36 alternative planning strategy.

37 (iv) Preparation and circulation of a draft sustainable
38 communities strategy and an alternative planning strategy, if one
39 is prepared, not less than 55 days before adoption of a final regional
40 transportation plan.

1 (v) At least three public hearings on the draft sustainable
2 communities strategy in the regional transportation plan and
3 alternative planning strategy, if one is prepared. If the metropolitan
4 transportation organization consists of a single county, at least two
5 public hearings shall be held. To the maximum extent feasible, the
6 hearings shall be in different parts of the region to maximize the
7 opportunity for participation by members of the public throughout
8 the region.

9 (vi) A process for enabling members of the public to provide a
10 single request to receive notices, information, and updates.

11 (G) In preparing a sustainable communities strategy, the
12 metropolitan planning organization shall consider spheres of
13 influence that have been adopted by the local agency formation
14 commissions within its region.

15 (H) Prior to adopting a sustainable communities strategy, the
16 metropolitan planning organization shall quantify the reduction in
17 greenhouse gas emissions projected to be achieved by the
18 sustainable communities strategy and set forth the difference, if
19 any, between the amount of that reduction and the target for the
20 region established by the state board.

21 (I) If the sustainable communities strategy, prepared in
22 compliance with subparagraph (B) or (D), is unable to reduce
23 greenhouse gas emissions to achieve the greenhouse gas emission
24 reduction targets established by the state board, the metropolitan
25 planning organization shall prepare an alternative planning strategy
26 to the sustainable communities strategy showing how those
27 greenhouse gas emission targets would be achieved through
28 alternative development patterns, infrastructure, or additional
29 transportation measures or policies. The alternative planning
30 strategy shall be a separate document from the regional
31 transportation plan, but it may be adopted concurrently with the
32 regional transportation plan. In preparing the alternative planning
33 strategy, the metropolitan planning organization:

34 (i) Shall identify the principal impediments to achieving the
35 targets within the sustainable communities strategy.

36 (ii) May include an alternative development pattern for the
37 region pursuant to subparagraphs (B) to (G), inclusive.

38 (iii) Shall describe how the greenhouse gas emission reduction
39 targets would be achieved by the alternative planning strategy, and
40 why the development pattern, measures, and policies in the

1 alternative planning strategy are the most practicable choices for
2 achievement of the greenhouse gas emission reduction targets.

3 (iv) An alternative development pattern set forth in the
4 alternative planning strategy shall comply with Part 450 of Title
5 23 of, and Part 93 of Title 40 of, the Code of Federal Regulations,
6 except to the extent that compliance will prevent achievement of
7 the greenhouse gas emission reduction targets approved by the
8 state board.

9 (v) For purposes of the California Environmental Quality Act
10 (Division 13 (commencing with Section 21000) of the Public
11 Resources Code), an alternative planning strategy shall not
12 constitute a land use plan, policy, or regulation, and the
13 inconsistency of a project with an alternative planning strategy
14 shall not be a consideration in determining whether a project may
15 have an environmental effect.

16 (J) (i) Prior to starting the public participation process adopted
17 pursuant to subparagraph (F), the metropolitan planning
18 organization shall submit a description to the state board of the
19 technical methodology it intends to use to estimate the greenhouse
20 gas emissions from its sustainable communities strategy and, if
21 appropriate, its alternative planning strategy. The state board shall
22 respond to the metropolitan planning organization in a timely
23 manner with written comments about the technical methodology,
24 including specifically describing any aspects of that methodology
25 it concludes will not yield accurate estimates of greenhouse gas
26 emissions, and suggested remedies. The metropolitan planning
27 organization is encouraged to work with the state board until the
28 state board concludes that the technical methodology operates
29 accurately.

30 (ii) After adoption, a metropolitan planning organization shall
31 submit a sustainable communities strategy or an alternative
32 planning strategy, if one has been adopted, to the state board for
33 review, including the quantification of the greenhouse gas emission
34 reductions the strategy would achieve and a description of the
35 technical methodology used to obtain that result. Review by the
36 state board shall be limited to acceptance or rejection of the
37 metropolitan planning organization's determination that the strategy
38 submitted would, if implemented, achieve the greenhouse gas
39 emission reduction targets established by the state board. The state
40 board shall complete its review within 60 days.

1 (iii) If the state board determines that the strategy submitted
2 would not, if implemented, achieve the greenhouse gas emission
3 reduction targets, the metropolitan planning organization shall
4 revise its strategy or adopt an alternative planning strategy, if not
5 previously adopted, and submit the strategy for review pursuant
6 to clause (ii). At a minimum, the metropolitan planning
7 organization must obtain state board acceptance that an alternative
8 planning strategy would, if implemented, achieve the greenhouse
9 gas emission reduction targets established for that region by the
10 state board.

11 (K) Neither a sustainable communities strategy nor an alternative
12 planning strategy regulates the use of land, nor, except as provided
13 by subparagraph (J), shall either one be subject to any state
14 approval. Nothing in a sustainable communities strategy shall be
15 interpreted as superseding the exercise of the land use authority
16 of cities and counties within the region. Nothing in this section
17 shall be interpreted to limit the state board's authority under any
18 other provision of law. Nothing in this section shall be interpreted
19 to authorize the abrogation of any vested right whether created by
20 statute or by common law. Nothing in this section shall require a
21 city's or county's land use policies and regulations, including its
22 general plan, to be consistent with the regional transportation plan
23 or an alternative planning strategy. Nothing in this section requires
24 a metropolitan planning organization to approve a sustainable
25 communities strategy that would be inconsistent with Part 450 of
26 Title 23 of, or Part 93 of Title 40 of, the Code of Federal
27 Regulations and any administrative guidance under those
28 regulations. Nothing in this section relieves a public or private
29 entity or any person from compliance with any other local, state,
30 or federal law.

31 (L) Nothing in this section requires projects programmed for
32 funding on or before December 31, 2011, to be subject to the
33 provisions of this paragraph if they (i) are contained in the 2007
34 or 2009 Federal Statewide Transportation Improvement Program,
35 (ii) are funded pursuant to Chapter 12.49 (commencing with
36 Section 8879.20) of Division 1 of Title 2, or (iii) were specifically
37 listed in a ballot measure prior to December 31, 2008, approving
38 a sales tax increase for transportation projects. Nothing in this
39 section shall require a transportation sales tax authority to change
40 the funding allocations approved by the voters for categories of

1 transportation projects in a sales tax measure adopted prior to
2 December 31, 2010. For purposes of this subparagraph, a
3 transportation sales tax authority is a district, as defined in Section
4 7252 of the Revenue and Taxation Code, that is authorized to
5 impose a sales tax for transportation purposes.

6 (M) A metropolitan planning organization, or a regional
7 transportation planning agency not within a metropolitan planning
8 organization, that is required to adopt a regional transportation
9 plan not less than every five years, may elect to adopt the plan not
10 less than every four years. This election shall be made by the board
11 of directors of the metropolitan planning organization or regional
12 transportation planning agency no later than June 1, 2009, or
13 thereafter 54 months prior to the statutory deadline for the adoption
14 of housing elements for the local jurisdictions within the region,
15 after a public hearing at which comments are accepted from
16 members of the public and representatives of cities and counties
17 within the region covered by the metropolitan planning
18 organization or regional transportation planning agency. Notice
19 of the public hearing shall be given to the general public and by
20 mail to cities and counties within the region no later than 30 days
21 prior to the date of the public hearing. Notice of election shall be
22 promptly given to the Department of Housing and Community
23 Development. The metropolitan planning organization or the
24 regional transportation planning agency shall complete its next
25 regional transportation plan within three years of the notice of
26 election.

27 (N) Two or more of the metropolitan planning organizations
28 for Fresno County, Kern County, Kings County, Madera County,
29 Merced County, San Joaquin County, Stanislaus County, and
30 Tulare County may work together to develop and adopt
31 multiregional goals and policies that may address interregional
32 land use, transportation, economic, air quality, and climate
33 relationships. The participating metropolitan planning organizations
34 may also develop a multiregional sustainable communities strategy,
35 to the extent consistent with federal law, or an alternative planning
36 strategy for adoption by the metropolitan planning organizations.
37 Each participating metropolitan planning organization shall
38 consider any adopted multiregional goals and policies in the
39 development of a sustainable communities strategy and, if
40 applicable, an alternative planning strategy for its region.

1 (3) An action element that describes the programs and actions
2 necessary to implement the plan and assigns implementation
3 responsibilities. The action element may describe all transportation
4 projects proposed for development during the 20-year or greater
5 life of the plan. The action element shall consider congestion
6 management programming activities carried out within the region.

7 (4) (A) A financial element that summarizes the cost of plan
8 implementation constrained by a realistic projection of available
9 revenues. The financial element shall also contain
10 recommendations for allocation of funds. A county transportation
11 commission created pursuant to Section 130000 of the Public
12 Utilities Code shall be responsible for recommending projects to
13 be funded with regional improvement funds, if the project is
14 consistent with the regional transportation plan. The first five years
15 of the financial element shall be based on the five-year estimate
16 of funds developed pursuant to Section 14524. The financial
17 element may recommend the development of specified new sources
18 of revenue, consistent with the policy element and action element.

19 (B) The financial element of transportation planning agencies
20 with populations that exceed 200,000 persons may include a project
21 cost breakdown for all projects proposed for development during
22 the 20-year life of the plan that includes total expenditures and
23 related percentages of total expenditures for all of the following:

- 24 (i) State highway expansion.
- 25 (ii) State highway rehabilitation, maintenance, and operations.
- 26 (iii) Local road and street expansion.
- 27 (iv) Local road and street rehabilitation, maintenance, and
28 operation.
- 29 (v) Mass transit, commuter rail, and intercity rail expansion.
- 30 (vi) Mass transit, commuter rail, and intercity rail rehabilitation,
31 maintenance, and operations.
- 32 (vii) Pedestrian and bicycle facilities.
- 33 (viii) Environmental enhancements and mitigation.
- 34 (ix) Research and planning.
- 35 (x) Other categories.

36 (C) The metropolitan planning organization or county
37 transportation agency, whichever entity is appropriate, shall
38 consider financial incentives for cities and counties that have
39 resource areas or farmland, as defined in Section 65080.01, for
40 the purposes of, for example, transportation investments for the

1 preservation and safety of the city street or county road system
2 and farm-to-market and interconnectivity transportation needs.
3 The metropolitan planning organization or county transportation
4 agency, whichever entity is appropriate, shall also consider
5 financial assistance for counties to address countywide service
6 responsibilities in counties that contribute toward the greenhouse
7 gas emission reduction targets by implementing policies for growth
8 to occur within their cities.

9 (c) Each transportation planning agency may also include other
10 factors of local significance as an element of the regional
11 transportation plan, including, but not limited to, issues of mobility
12 for specific sectors of the community, including, but not limited
13 to, senior citizens.

14 (d) Except as otherwise provided in this subdivision, each
15 transportation planning agency shall adopt and submit, every four
16 years, an updated regional transportation plan to the California
17 Transportation Commission and the Department of Transportation.
18 A transportation planning agency located in a federally designated
19 air quality attainment area or that does not contain an urbanized
20 area may at its option adopt and submit a regional transportation
21 plan every five years. When applicable, the plan shall be consistent
22 with federal planning and programming requirements and shall
23 conform to the regional transportation plan guidelines adopted by
24 the California Transportation Commission. Prior to adoption of
25 the regional transportation plan, a public hearing shall be held after
26 the giving of notice of the hearing by publication in the affected
27 county or counties pursuant to Section 6061.

28 SEC. 96. Section 65583 of the Government Code is amended
29 to read:

30 65583. The housing element shall consist of an identification
31 and analysis of existing and projected housing needs and a
32 statement of goals, policies, quantified objectives, financial
33 resources, and scheduled programs for the preservation,
34 improvement, and development of housing. The housing element
35 shall identify adequate sites for housing, including rental housing,
36 factory-built housing, mobilehomes, and emergency shelters, and
37 shall make adequate provision for the existing and projected needs
38 of all economic segments of the community. The element shall
39 contain all of the following:

1 (a) An assessment of housing needs and an inventory of
2 resources and constraints relevant to the meeting of these needs.
3 The assessment and inventory shall include all of the following:

4 (1) An analysis of population and employment trends and
5 documentation of projections and a quantification of the locality's
6 existing and projected housing needs for all income levels,
7 including extremely low income households, as defined in
8 subdivision (b) of Section 50105 and Section 50106 of the Health
9 and Safety Code. These existing and projected needs shall include
10 the locality's share of the regional housing need in accordance
11 with Section 65584. Local agencies shall calculate the subset of
12 very low income households allotted under Section 65584 that
13 qualify as extremely low income households. The local agency
14 may either use available census data to calculate the percentage
15 of very low income households that qualify as extremely low
16 income households or presume that 50 percent of the very low
17 income households qualify as extremely low income households.
18 The number of extremely low income households and very low
19 income households shall equal the jurisdiction's allocation of very
20 low income households pursuant to Section 65584.

21 (2) An analysis and documentation of household characteristics,
22 including level of payment compared to ability to pay, housing
23 characteristics, including overcrowding, and housing stock
24 condition.

25 (3) An inventory of land suitable for residential development,
26 including vacant sites and sites having potential for redevelopment,
27 and an analysis of the relationship of zoning and public facilities
28 and services to these sites.

29 (4) (A) The identification of a zone or zones where emergency
30 shelters are allowed as a permitted use without a conditional use
31 or other discretionary permit. The identified zone or zones shall
32 include sufficient capacity to accommodate the need for emergency
33 shelter identified in paragraph (7), except that each local
34 government shall identify a zone or zones that can accommodate
35 at least one year-round emergency shelter. If the local government
36 cannot identify a zone or zones with sufficient capacity, the local
37 government shall include a program to amend its zoning ordinance
38 to meet the requirements of this paragraph within one year of the
39 adoption of the housing element. The local government may
40 identify additional zones where emergency shelters are permitted

1 with a conditional use permit. The local government shall also
2 demonstrate that existing or proposed permit processing,
3 development, and management standards are objective and
4 encourage and facilitate the development of, or conversion to,
5 emergency shelters. Emergency shelters may only be subject to
6 those development and management standards that apply to
7 residential or commercial development within the same zone except
8 that a local government may apply written, objective standards
9 that include all of the following:

10 (i) The maximum number of beds or persons permitted to be
11 served nightly by the facility.

12 (ii) Off-street parking based upon demonstrated need, provided
13 that the standards do not require more parking for emergency
14 shelters than for other residential or commercial uses within the
15 same zone.

16 (iii) The size and location of exterior and interior onsite waiting
17 and client intake areas.

18 (iv) The provision of onsite management.

19 (v) The proximity to other emergency shelters, provided that
20 emergency shelters are not required to be more than 300 feet apart.

21 (vi) The length of stay.

22 (vii) Lighting.

23 (viii) Security during hours that the emergency shelter is in
24 operation.

25 (B) The permit processing, development, and management
26 standards applied under this paragraph shall not be deemed to be
27 discretionary acts within the meaning of the California
28 Environmental Quality Act (Division 13 (commencing with Section
29 21000) of the Public Resources Code).

30 (C) A local government that can demonstrate to the satisfaction
31 of the department the existence of one or more emergency shelters
32 either within its jurisdiction or pursuant to a multijurisdictional
33 agreement that can accommodate that jurisdiction's need for
34 emergency shelter identified in paragraph (7) may comply with
35 the zoning requirements of subparagraph (A) by identifying a zone
36 or zones where new emergency shelters are allowed with a
37 conditional use permit.

38 (D) A local government with an existing ordinance or ordinances
39 that comply with this paragraph shall not be required to take
40 additional action to identify zones for emergency shelters. The

1 housing element must only describe how existing ordinances,
2 policies, and standards are consistent with the requirements of this
3 paragraph.

4 (5) An analysis of potential and actual governmental constraints
5 upon the maintenance, improvement, or development of housing
6 for all income levels, including the types of housing identified in
7 paragraph (1) of subdivision (c), and for persons with disabilities
8 as identified in the analysis pursuant to paragraph (7), including
9 land use controls, building codes and their enforcement, site
10 improvements, fees and other exactions required of developers,
11 and local processing and permit procedures. The analysis shall
12 also demonstrate local efforts to remove governmental constraints
13 that hinder the locality from meeting its share of the regional
14 housing need in accordance with Section 65584 and from meeting
15 the need for housing for persons with disabilities, supportive
16 housing, transitional housing, and emergency shelters identified
17 pursuant to paragraph (7). Transitional housing and supportive
18 housing shall be considered a residential use of property, and shall
19 be subject only to those restrictions that apply to other residential
20 dwellings of the same type in the same zone.

21 (6) An analysis of potential and actual nongovernmental
22 constraints upon the maintenance, improvement, or development
23 of housing for all income levels, including the availability of
24 financing, the price of land, and the cost of construction.

25 (7) An analysis of any special housing needs, such as those of
26 the elderly, persons with disabilities, large families, farmworkers,
27 families with female heads of households, and families and persons
28 in need of emergency shelter. The need for emergency shelter shall
29 be assessed based on annual and seasonal need. The need for
30 emergency shelter may be reduced by the number of supportive
31 housing units that are identified in an adopted 10-year plan to end
32 chronic homelessness and that are either vacant or for which
33 funding has been identified to allow construction during the
34 planning period.

35 (8) An analysis of opportunities for energy conservation with
36 respect to residential development. Cities and counties are
37 encouraged to include weatherization and energy efficiency
38 improvements as part of publicly subsidized housing rehabilitation
39 projects. This may include energy efficiency measures that

1 encompass the building envelope, its heating and cooling systems,
2 and its electrical system.

3 (9) An analysis of existing assisted housing developments that
4 are eligible to change from low-income housing uses during the
5 next 10 years due to termination of subsidy contracts, mortgage
6 prepayment, or expiration of restrictions on use. “Assisted housing
7 developments,” for the purpose of this section, shall mean
8 multifamily rental housing that receives governmental assistance
9 under federal programs listed in subdivision (a) of Section
10 65863.10, state and local multifamily revenue bond programs,
11 local redevelopment programs, the federal Community
12 Development Block Grant Program, or local in-lieu fees. “Assisted
13 housing developments” shall also include multifamily rental units
14 that were developed pursuant to a local inclusionary housing
15 program or used to qualify for a density bonus pursuant to Section
16 65916.

17 (A) The analysis shall include a listing of each development by
18 project name and address, the type of governmental assistance
19 received, the earliest possible date of change from low-income
20 use, and the total number of elderly and nonelderly units that could
21 be lost from the locality’s low-income housing stock in each year
22 during the 10-year period. For purposes of state and federally
23 funded projects, the analysis required by this subparagraph need
24 only contain information available on a statewide basis.

25 (B) The analysis shall estimate the total cost of producing new
26 rental housing that is comparable in size and rent levels, to replace
27 the units that could change from low-income use, and an estimated
28 cost of preserving the assisted housing developments. This cost
29 analysis for replacement housing may be done aggregately for
30 each five-year period and does not have to contain a
31 project-by-project cost estimate.

32 (C) The analysis shall identify public and private nonprofit
33 corporations known to the local government which have legal and
34 managerial capacity to acquire and manage these housing
35 developments.

36 (D) The analysis shall identify and consider the use of all federal,
37 state, and local financing and subsidy programs which can be used
38 to preserve, for lower income households, the assisted housing
39 developments, identified in this paragraph, including, but not
40 limited to, federal Community Development Block Grant Program

1 funds, tax increment funds received by a redevelopment agency
2 of the community, and administrative fees received by a housing
3 authority operating within the community. In considering the use
4 of these financing and subsidy programs, the analysis shall identify
5 the amounts of funds under each available program which have
6 not been legally obligated for other purposes and which could be
7 available for use in preserving assisted housing developments.

8 (b) (1) A statement of the community's goals, quantified
9 objectives, and policies relative to the maintenance, preservation,
10 improvement, and development of housing.

11 (2) It is recognized that the total housing needs identified
12 pursuant to subdivision (a) may exceed available resources and
13 the community's ability to satisfy this need within the content of
14 the general plan requirements outlined in Article 5 (commencing
15 with Section 65300). Under these circumstances, the quantified
16 objectives need not be identical to the total housing needs. The
17 quantified objectives shall establish the maximum number of
18 housing units by income category, including extremely low income,
19 that can be constructed, rehabilitated, and conserved over a
20 five-year time period.

21 (c) A program which sets forth a schedule of actions during the
22 planning period, each with a timeline for implementation, which
23 may recognize that certain programs are ongoing, such that there
24 will be beneficial impacts of the programs within the planning
25 period, that the local government is undertaking or intends to
26 undertake to implement the policies and achieve the goals and
27 objectives of the housing element through the administration of
28 land use and development controls, the provision of regulatory
29 concessions and incentives, the utilization of appropriate federal
30 and state financing and subsidy programs when available, and the
31 utilization of moneys in a low- and moderate-income housing fund
32 of an agency if the locality has established a redevelopment project
33 area pursuant to the Community Redevelopment Law (Division
34 24 (commencing with Section 33000) of the Health and Safety
35 Code). In order to make adequate provision for the housing needs
36 of all economic segments of the community, the program shall do
37 all of the following:

38 (1) Identify actions that will be taken to make sites available
39 during the planning period of the general plan with appropriate
40 zoning and development standards and with services and facilities

1 to accommodate that portion of the city's or county's share of the
2 regional housing need for each income level that could not be
3 accommodated on sites identified in the inventory completed
4 pursuant to paragraph (3) of subdivision (a) without rezoning, and
5 to comply with the requirements of Section 65584.09. Sites shall
6 be identified as needed to facilitate and encourage the development
7 of a variety of types of housing for all income levels, including
8 multifamily rental housing, factory-built housing, mobilehomes,
9 housing for agricultural employees, supportive housing,
10 single-room occupancy units, emergency shelters, and transitional
11 housing.

12 (A) Where the inventory of sites, pursuant to paragraph (3) of
13 subdivision (a), does not identify adequate sites to accommodate
14 the need for groups of all household income levels pursuant to
15 Section 65584, rezoning of those sites, including adoption of
16 minimum density and development standards, for jurisdictions
17 with an eight-year housing element planning period pursuant to
18 Section 65588, shall be completed no later than three years after
19 either the date the housing element is adopted pursuant to
20 subdivision (f) of Section 65585 or the date that is 90 days after
21 receipt of comments from the department pursuant to subdivision
22 (b) of Section 65585, whichever is earlier, unless the deadline is
23 extended pursuant to subdivision (f). Notwithstanding the
24 foregoing, for a local government that fails to adopt a housing
25 element within 120 days of the statutory deadline in Section 65588
26 for adoption of the housing element, rezoning of those sites,
27 including adoption of minimum density and development standards,
28 shall be completed no later than three years and 120 days from the
29 statutory deadline in Section 65588 for adoption of the housing
30 element.

31 (B) Where the inventory of sites, pursuant to paragraph (3) of
32 subdivision (a), does not identify adequate sites to accommodate
33 the need for groups of all household income levels pursuant to
34 Section 65584, the program shall identify sites that can be
35 developed for housing within the planning period pursuant to
36 subdivision (h) of Section 65583.2. The identification of sites shall
37 include all components specified in subdivision (b) of Section
38 65583.2.

39 (C) Where the inventory of sites pursuant to paragraph (3) of
40 subdivision (a) does not identify adequate sites to accommodate

1 the need for farmworker housing, the program shall provide for
2 sufficient sites to meet the need with zoning that permits
3 farmworker housing use by right, including density and
4 development standards that could accommodate and facilitate the
5 feasibility of the development of farmworker housing for low- and
6 very low income households.

7 (2) Assist in the development of adequate housing to meet the
8 needs of extremely low, very low, low-, and moderate-income
9 households.

10 (3) Address and, where appropriate and legally possible, remove
11 governmental constraints to the maintenance, improvement, and
12 development of housing, including housing for all income levels
13 and housing for persons with disabilities. The program shall remove
14 constraints to, and provide reasonable accommodations for housing
15 designed for, intended for occupancy by, or with supportive
16 services for, persons with disabilities.

17 (4) Conserve and improve the condition of the existing
18 affordable housing stock, which may include addressing ways to
19 mitigate the loss of dwelling units demolished by public or private
20 action.

21 (5) Promote housing opportunities for all persons regardless of
22 race, religion, sex, marital status, ancestry, national origin, color,
23 familial status, or disability.

24 (6) Preserve for lower income households the assisted housing
25 developments identified pursuant to paragraph (9) of subdivision
26 (a). The program for preservation of the assisted housing
27 developments shall utilize, to the extent necessary, all available
28 federal, state, and local financing and subsidy programs identified
29 in paragraph (9) of subdivision (a), except where a community has
30 other urgent needs for which alternative funding sources are not
31 available. The program may include strategies that involve local
32 regulation and technical assistance.

33 (7) The program shall include an identification of the agencies
34 and officials responsible for the implementation of the various
35 actions and the means by which consistency will be achieved with
36 other general plan elements and community goals. The local
37 government shall make a diligent effort to achieve public
38 participation of all economic segments of the community in the
39 development of the housing element, and the program shall
40 describe this effort.

(d) (1) A local government may satisfy all or part of its requirement to identify a zone or zones suitable for the development of emergency shelters pursuant to paragraph (4) of subdivision (a) by adopting and implementing a multijurisdictional agreement, with a maximum of two other adjacent communities, that requires the participating jurisdictions to develop at least one year-round emergency shelter within two years of the beginning of the planning period.

(2) The agreement shall allocate a portion of the new shelter capacity to each jurisdiction as credit towards its emergency shelter need, and each jurisdiction shall describe how the capacity was allocated as part of its housing element.

(3) Each member jurisdiction of a multijurisdictional agreement shall describe in its housing element all of the following:

(A) How the joint facility will meet the jurisdiction's emergency shelter need.

(B) The jurisdiction's contribution to the facility for both the development and ongoing operation and management of the facility.

(C) The amount and source of the funding that the jurisdiction contributes to the facility.

(4) The aggregate capacity claimed by the participating jurisdictions in their housing elements shall not exceed the actual capacity of the shelter.

(e) Except as otherwise provided in this article, amendments to this article that alter the required content of a housing element shall apply to both of the following:

(1) A housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when a city, county, or city and county submits a draft to the department for review pursuant to Section 65585 more than 90 days after the effective date of the amendment to this section.

(2) Any housing element or housing element amendment prepared pursuant to subdivision (e) of Section 65588 or Section 65584.02, when the city, county, or city and county fails to submit the first draft to the department before the due date specified in Section 65588 or 65584.02.

(f) The deadline for completing required rezoning pursuant to subparagraph (A) of paragraph (1) of subdivision (c) shall be extended by one year if the local government has completed the

1 rezoning at densities sufficient to accommodate at least 75 percent
2 of the units for low- and very low income households and if the
3 legislative body at the conclusion of a public hearing determines,
4 based upon substantial evidence, that any of the following
5 circumstances exist:

6 (1) The local government has been unable to complete the
7 rezoning because of the action or inaction beyond the control of
8 the local government of any other state, federal, or local agency.

9 (2) The local government is unable to complete the rezoning
10 because of infrastructure deficiencies due to fiscal or regulatory
11 constraints.

12 (3) The local government must undertake a major revision to
13 its general plan in order to accommodate the housing-related
14 policies of a sustainable communities strategy or an alternative
15 planning strategy adopted pursuant to Section 65080.

16 The resolution and the findings shall be transmitted to the
17 department together with a detailed budget and schedule for
18 preparation and adoption of the required rezonings, including plans
19 for citizen participation and expected interim action. The schedule
20 shall provide for adoption of the required rezoning within one year
21 of the adoption of the resolution.

22 (g) (1) If a local government fails to complete the rezoning by
23 the deadline provided in subparagraph (A) of paragraph (1) of
24 subdivision (c), as it may be extended pursuant to subdivision (f),
25 except as provided in paragraph (2), a local government may not
26 disapprove a housing development project, nor require a
27 conditional use permit, planned unit development permit, or other
28 locally imposed discretionary permit, or impose a condition that
29 would render the project infeasible, if the housing development
30 project (A) is proposed to be located on a site required to be
31 rezoned pursuant to the program action required by that
32 subparagraph and (B) complies with applicable, objective general
33 plan and zoning standards and criteria, including design review
34 standards, described in the program action required by that
35 subparagraph. Any subdivision of sites shall be subject to the
36 Subdivision Map Act (Division 2 (commencing with Section
37 66410)). Design review shall not constitute a “project” for purposes
38 of Division 13 (commencing with Section 21000) of the Public
39 Resources Code.

1 (2) A local government may disapprove a housing development
2 described in paragraph (1) if it makes written findings supported
3 by substantial evidence on the record that both of the following
4 conditions exist:

5 (A) The housing development project would have a specific,
6 adverse impact upon the public health or safety unless the project
7 is disapproved or approved upon the condition that the project be
8 developed at a lower density. As used in this paragraph, a “specific,
9 adverse impact” means a significant, quantifiable, direct, and
10 unavoidable impact, based on objective, identified written public
11 health or safety standards, policies, or conditions as they existed
12 on the date the application was deemed complete.

13 (B) There is no feasible method to satisfactorily mitigate or
14 avoid the adverse impact identified pursuant to paragraph (1), other
15 than the disapproval of the housing development project or the
16 approval of the project upon the condition that it be developed at
17 a lower density.

18 (3) The applicant or any interested person may bring an action
19 to enforce this subdivision. If a court finds that the local agency
20 disapproved a project or conditioned its approval in violation of
21 this subdivision, the court shall issue an order or judgment
22 compelling compliance within 60 days. The court shall retain
23 jurisdiction to ensure that its order or judgment is carried out. If
24 the court determines that its order or judgment has not been carried
25 out within 60 days, the court may issue further orders to ensure
26 that the purposes and policies of this subdivision are fulfilled. In
27 any such action, the city, county, or city and county shall bear the
28 burden of proof.

29 (4) For purposes of this subdivision, “housing development
30 project” means a project to construct residential units for which
31 the project developer provides sufficient legal commitments to the
32 appropriate local agency to ensure the continued availability and
33 use of at least 49 percent of the housing units for very low, low-,
34 and moderate-income households with an affordable housing cost
35 or affordable rent, as defined in Section 50052.5 or 50053 of the
36 Health and Safety Code, respectively, for the period required by
37 the applicable financing.

38 (h) An action to enforce the program actions of the housing
39 element shall be brought pursuant to Section 1085 of the Code of
40 Civil Procedure.

1 SEC. 97. Section 66540.12 of the Government Code is amended
2 to read:

3 66540.12. (a) The authority shall be governed by a board
4 composed of five members, as follows:

5 (1) Three members shall be appointed by the Governor, subject
6 to confirmation by the Senate. The Governor shall make the initial
7 appointment of these members of the board no later than January
8 11, 2008.

9 (2) One member shall be appointed by the Senate Committee
10 on Rules.

11 (3) One member shall be appointed by the Speaker of the
12 Assembly.

13 (b) Each member of the board shall be a resident of a county in
14 the bay area region.

15 (c) Public officers associated with an area of government,
16 including planning or water, whether elected or appointed, may
17 be appointed to serve contemporaneously as members of the board.
18 A public agency shall not have more than one representative on
19 the board of the authority.

20 (d) The Governor shall designate one member as the chairperson
21 of the board and one member as the vice chairperson of the board.

22 (e) The term of a member of the board shall be six years.

23 (f) Vacancies shall be filled immediately by the appointing
24 power for the unexpired portion of the terms in which they occur.

25 SEC. 98. Section 66540.32 of the Government Code is amended
26 to read:

27 66540.32. (a) The authority shall create and adopt, on or before
28 July 1, 2009, an emergency water transportation system
29 management plan for water transportation services in the bay area
30 region in the event that bridges, highways, and other facilities are
31 rendered wholly or significantly inoperable.

32 (b) (1) The authority shall create and adopt, on or before July
33 1, 2009, a transition plan to facilitate the transfer of existing public
34 transportation ferry services within the bay area region to the
35 authority pursuant to this title. In the preparation of the transition
36 plan, priority shall be given to ensuring continuity in the programs,
37 services, and activities of existing public transportation ferry
38 services.

39 (2) The plan required by this subdivision shall include all of the
40 following:

1 (A) A description of existing ferry services in the bay area
2 region, as of January 1, 2008, that are to be transferred to the
3 authority pursuant to Section 66540.11 and a description of any
4 proposed changes to those services.

5 (B) A description of any proposed expansion of ferry services
6 in the bay area region.

7 (C) An inventory of the ferry and ferry-related capital assets or
8 leasehold interests, including, but not limited to, vessels, terminals,
9 maintenance facilities, and existing or planned parking facilities
10 or parking structures, and of the personnel, operating costs, and
11 revenues of public agencies operating public transportation ferries
12 and providing water transportation services as of January 1, 2008,
13 and those facilities that are to be transferred, in whole or in part,
14 to the authority pursuant to Section 66540.11.

15 (D) A description of those capital assets, leasehold interests,
16 and personnel identified in subparagraph (C) that the authority
17 proposes to be transferred pursuant to Section 66540.11.

18 (E) An operating plan that includes, at a minimum, an estimate
19 of the costs to continue the ferry services described in subparagraph
20 (A) for at least five years and a detailed description of current and
21 historically available revenues and proposed sources of revenue
22 to meet those anticipated costs. Further, the operating plan shall
23 identify options for closing any projected deficits or for addressing
24 increased cost inputs, such as fuel, for at least the five-year period.

25 (F) A description of the proposed services, duties, functions,
26 responsibilities, and liabilities of the authority and those of agencies
27 providing or proposed to provide water transportation services for
28 the authority.

29 (G) To the extent the plan may include the transfer of assets or
30 services from a local agency to the authority pursuant to Section
31 66540.11, that transfer shall be subject to negotiation and
32 agreement by the local agency. The authority and the local agency
33 shall negotiate and agree on fair terms, including just
34 compensation, prior to any transfer authorized by this title.

35 (H) An initial five-year Capital Improvement Program (CIP)
36 detailing how the authority and its local agency partners plan to
37 support financing and completion of capital improvement projects,
38 including, but not limited to, those described in subparagraph (C),
39 that are required to support the operation of transferred ferry
40 services. Priority shall be given to emergency response projects

1 and those capital improvement projects for which a Notice of
2 Determination pursuant to the California Environmental Quality
3 Act (Division 13 (commencing with Section 21000) of the Public
4 Resources Code) has been filed and which further the expansion,
5 efficiency, or effectiveness of the ferry system.

6 (I) A description of how existing and expanded water
7 transportation services will provide seamless connections to other
8 transit providers in the bay area region, including, but not limited
9 to, a description of how the authority will coordinate with all local
10 agencies to ensure optimal public transportation services, including
11 supplemental bus services that existed on January 1, 2008, that
12 support access to the ferry system for the immediate and
13 surrounding communities.

14 (J) The date on which the ferry services are to be transferred to
15 the authority.

16 (3) To the extent the plan required by this subdivision includes
17 proposed changes to water transportation services or related
18 facilities historically provided by the City of Vallejo or the City
19 of Alameda, the proposed changes shall be consistent with that
20 city's general plan, its redevelopment plans, and its development
21 and disposition agreements for projects related to the provision of
22 water transportation services. Those projects include, but are not
23 limited to, the construction of parking facilities and transit transfer
24 facilities within close proximity of a ferry terminal or the relocation
25 of a ferry terminal.

26 (c) In developing the plans described in subdivisions (a) and
27 (b), the authority shall cooperate to the fullest extent possible with
28 the Metropolitan Transportation Commission, the California
29 Emergency Management Agency (Cal EMA), the Association of
30 Bay Area Governments, and the San Francisco Bay Conservation
31 and Development Commission, and shall, to the fullest extent
32 possible, coordinate its planning with local agencies, including
33 those local agencies that operated, or contracted for the operation
34 of, public water transportation services as of the effective date of
35 this title. To avoid duplication of work, the authority shall make
36 maximum use of data and information available from the planning
37 programs of the Metropolitan Transportation Commission, (Cal
38 EMA), the Association of Bay Area Governments, the San
39 Francisco Bay Conservation and Development Commission, the
40 cities and counties in the San Francisco Bay area, and other public

1 and private planning agencies. In addition, the authority shall
2 consider both of the following:

3 (1) The San Francisco Bay Area Water Transit Implementation
4 and Operations Plan adopted by the San Francisco Bay Area Water
5 Transit Authority on July 10, 2003.

6 (2) Any other plan concerning water transportation within the
7 bay area region developed or adopted by a general purpose local
8 government or special district that operates or sponsors water
9 transit, including, but not limited to, those water transportation
10 services provided under agreement with a private operator.

11 (d) The authority shall prepare a specific transition plan for any
12 transfer not anticipated by the transition plan required under
13 subdivision (b).

14 (e) Prior to adopting the plans required by this section, the
15 authority shall establish a process for taking public input on the
16 plans in consultation with existing operators of public ferry services
17 affected by the plans. The public input process shall include at
18 least one public hearing conducted at least 60 days prior to the
19 adoption of the plans in each city where an operational ferry facility
20 existed as of January 1, 2008.

21 SEC. 99. Section 70375 of the Government Code is amended
22 to read:

23 70375. (a) This article shall take effect on January 1, 2003,
24 and the fund, penalty, and fee assessment established by this article
25 shall become operative on January 1, 2003, except as otherwise
26 provided in this article.

27 (b) In each county, the five-dollar (\$5) penalty amount
28 authorized by subdivision (a) of Section 70372 shall be reduced
29 by the amount collected for transmission to the state for inclusion
30 in the Transitional State Court Facilities Construction Fund
31 established pursuant to Section 70401 to the extent it is funded by
32 moneys from the local courthouse construction fund.

33 (c) The authority for all of the following shall expire
34 proportionally on June 30 following the date of transfer of
35 responsibility for facilities from the county to the Judicial Council,
36 except so long as moneys are needed to pay for construction
37 provided for in those sections and undertaken prior to the transfer
38 of responsibility for facilities from the county to the Judicial
39 Council:

1 (1) An additional penalty for a local courthouse construction
2 fund established pursuant to Section 76100.

3 (2) A filing fee surcharge in the County of Riverside established
4 pursuant to Section 70622.

5 (3) A filing fee surcharge in the County of San Bernardino
6 established pursuant to Section 70624.

7 (4) A filing fee surcharge in the City and County of San
8 Francisco established pursuant to Section 70625.

9 (d) For purposes of subdivision (c), “proportionally” means the
10 proportion of the fee or surcharge that shall expire upon the transfer
11 of responsibility for a facility that is the same proportion as the
12 square footage that facility bears to the total square footage of
13 court facilities in that county.

14 SEC. 100. Section 70391 of the Government Code is amended
15 to read:

16 70391. The Judicial Council, as the policymaking body for the
17 judicial branch, shall have the following responsibilities and
18 authorities with regard to court facilities, in addition to any other
19 responsibilities or authorities established by law:

20 (a) Exercise full responsibility, jurisdiction, control, and
21 authority as an owner would have over trial court facilities the title
22 of which is held by the state, including, but not limited to, the
23 acquisition and development of facilities.

24 (b) Exercise the full range of policymaking authority over trial
25 court facilities, including, but not limited to, planning, construction,
26 acquisition, and operation, to the extent not expressly otherwise
27 limited by law.

28 (c) Dispose of surplus court facilities following the transfer of
29 responsibility under Article 3 (commencing with Section 70321),
30 subject to all of the following:

31 (1) If the property was a court facility previously the
32 responsibility of the county, the Judicial Council shall comply
33 with the requirements of Section 11011, and as follows, except
34 that, notwithstanding any other provision of law, the proportion
35 of the net proceeds that represents the proportion of other state
36 funds used on the property other than for operation and
37 maintenance shall be returned to the fund from which it came and
38 the remainder of the proceeds shall be deposited in the State Court
39 Facilities Construction Fund.

1 (2) The Judicial Council shall consult with the county
2 concerning the disposition of the facility. Notwithstanding any
3 other law, including Section 11011, when requested by the
4 transferring county, a surplus facility shall be offered to that county
5 at fair market value prior to being offered to another state agency
6 or local government agency.

7 (3) The Judicial Council shall consider whether the potential
8 new or planned use of the facility:

9 (A) Is compatible with the use of other adjacent public buildings.

10 (B) Unreasonably departs from the historic or local character
11 of the surrounding property or local community.

12 (C) Has a negative impact on the local community.

13 (D) Unreasonably interferes with other governmental agencies
14 that use or are located in or adjacent to the building containing the
15 court facility.

16 (E) Is of sufficient benefit to outweigh the public good in
17 maintaining it as a court facility or building.

18 (4) All funds received for disposal of surplus court facilities
19 shall be deposited by the Judicial Council in the State Court
20 Facilities Construction Fund.

21 (5) If the facility was acquired, rehabilitated, or constructed, in
22 whole or in part, with moneys in the State Court Facilities
23 Construction Fund that were deposited in that fund from the state
24 fund, any funds received for disposal of that facility shall be
25 apportioned to the state fund and the State Court Facilities
26 Construction Fund in the same proportion that the original cost of
27 the building was paid from the state fund and other sources of the
28 State Court Facilities Construction Fund.

29 (6) Submission of a plan to the Legislature for the disposition
30 of court facilities transferred to the state, prior to, or as part of, any
31 budget submission to fund a new courthouse that will replace the
32 existing court facilities transferred to the state.

33 (d) Conduct audits of all of the following:

34 (1) The collection of fees by the local courts.

35 (2) The moneys in local courthouse construction funds
36 established pursuant to Section 76100.

37 (3) The collection of moneys to be transmitted to the Controller
38 for deposit in the Immediate and Critical Needs Account of the
39 State Court Facilities Construction Fund, established in Section
40 70371.5.

1 (e) Establish policies, procedures, and guidelines for ensuring
2 that the courts have adequate and sufficient facilities, including,
3 but not limited to, facilities planning, acquisition, construction,
4 design, operation, and maintenance.

5 (f) Establish and consult with local project advisory groups on
6 the construction of new trial court facilities, including the trial
7 court, the county, the local sheriff, state agencies, bar groups,
8 including, but not limited to, the criminal defense bar, and members
9 of the community. Consultation with the local sheriff in design,
10 planning, and construction shall include the physical layout of new
11 facilities, as it relates to court security and other security
12 considerations, including matters relating to the safe control and
13 transport of in-custody defendants.

14 (g) Manage court facilities in consultation with the trial courts.

15 (h) Allocate appropriated funds for court facilities maintenance
16 and construction, subject to the other provisions of this chapter.

17 (i) Manage shared-use facilities to the extent required by the
18 agreement under Section 70343.

19 (j) Prepare funding requests for court facility construction,
20 repair, and maintenance.

21 (k) Implement the design, bid, award, and construction of all
22 court construction projects, except as delegated to others.

23 (l) Provide for capital outlay projects that may be built with
24 funds appropriated or otherwise available for these purposes as
25 follows:

26 (1) Approve five-year and master plans for each district.

27 (2) Establish priorities for construction.

28 (3) Recommend to the Governor and the Legislature the projects
29 to be funded by the State Court Facilities Construction Fund.

30 (4) Submit the cost of projects proposed to be funded to the
31 Department of Finance for inclusion in the Governor's Budget.

32 (m) In carrying out its responsibilities and authority under this
33 section, the Judicial Council shall consult with the local court for:

34 (1) Selecting and contracting with facility consultants.

35 (2) Preparing and reviewing architectural programs and designs
36 for court facilities.

37 (3) Preparing strategic master and five-year capital facilities
38 plans.

39 (4) Major maintenance of a facility.

1 SEC. 101. Section 76000 of the Government Code is amended
2 to read:

3 76000. (a) (1) Except as otherwise provided in this section,
4 in each county there shall be levied an additional penalty in the
5 amount of seven dollars (\$7) for every ten dollars (\$10), or part
6 of ten dollars (\$10), upon every fine, penalty, or forfeiture imposed
7 and collected by the courts for all criminal offenses, including all
8 offenses involving a violation of the Vehicle Code or a local
9 ordinance adopted pursuant to the Vehicle Code.

10 (2) The additional penalty shall be collected together with and
11 in the same manner as the amounts established by Section 1464
12 of the Penal Code. The moneys shall be taken from fines and
13 forfeitures deposited with the county treasurer prior to any division
14 pursuant to Section 1463 of the Penal Code. The county treasurer
15 shall deposit those amounts specified by the board of supervisors
16 by resolution in one or more of the funds established pursuant to
17 this chapter. However, deposits to these funds shall continue
18 through whatever period of time is necessary to repay any
19 borrowings made by the county on or before January 1, 1991, to
20 pay for construction provided for in this chapter.

21 (3) This additional penalty does not apply to the following:

22 (A) A restitution fine.

23 (B) A penalty authorized by Section 1464 of the Penal Code or
24 this chapter.

25 (C) A parking offense subject to Article 3 (commencing with
26 Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

27 (D) The state surcharge authorized by Section 1465.7 of the
28 Penal Code.

29 (b) In each authorized county, provided that the board of
30 supervisors has adopted a resolution stating that the implementation
31 of this subdivision is necessary to the county for the purposes
32 authorized, with respect to each authorized fund established
33 pursuant to Section 76100 or 76101, for every parking offense
34 where a parking penalty, fine, or forfeiture is imposed, an added
35 penalty of two dollars and fifty cents (\$2.50) shall be included in
36 the total penalty, fine, or forfeiture. Except as provided in
37 subdivision (c), for each parking case collected in the courts of the
38 county, the county treasurer shall place in each authorized fund
39 two dollars and fifty cents (\$2.50). The moneys shall be taken from
40 fines and forfeitures deposited with the county treasurer prior to

any division pursuant to Section 1463.009 of the Penal Code. The judges of the county shall increase the bail schedule amounts as appropriate to reflect the added penalty provided for by this section. In cities, districts, or other issuing agencies that elect to accept parking penalties, and otherwise process parking violations pursuant to Article 3 (commencing with Section 40200) of Chapter 1 of Division 17 of the Vehicle Code, the city, district, or issuing agency shall observe the increased bail amounts as established by the court reflecting the added penalty provided for by this section. Each agency that elects to process parking violations shall pay to the county treasurer two dollars and fifty cents (\$2.50) for each fund for each parking penalty collected on each violation that is not filed in court. Those payments to the county treasurer shall be made monthly, and the county treasurer shall deposit all those sums in the authorized fund. An issuing agency shall not be required to contribute revenues to a fund in excess of those revenues generated from the surcharges established in the resolution adopted pursuant to this chapter, except as otherwise agreed upon by the local governmental entities involved.

(c) The county treasurer shall deposit one dollar (\$1) of every two dollars and fifty cents (\$2.50) collected pursuant to subdivision (b) into the general fund of the county.

(d) The authority to impose the two-dollar-and-fifty-cent (\$2.50) penalty authorized by subdivision (b) shall be reduced to one dollar (\$1) as of the date of transfer of responsibility for facilities from the county to the Judicial Council pursuant to Article 3 (commencing with Section 70321) of Chapter 5.7, except as moneys are needed to pay for construction provided for in Section 76100 and undertaken prior to the transfer of responsibility for facilities from the county to the Judicial Council.

(e) The seven-dollar (\$7) additional penalty authorized by subdivision (a) shall be reduced in each county by the additional penalty amount assessed by the county for the local courthouse construction fund established by Section 76100 as of January 1, 1998, when the moneys in that fund are transferred to the state under Section 70402. The amount each county shall charge as an additional penalty under this section shall be as follows:

Alameda	\$5.00	Marin	\$5.00	San Luis Obispo	\$6.00
Alpine	\$5.00	Mariposa	\$2.00	San Mateo	\$4.75

1	Amador	\$5.00	Mendocino	\$7.00	Santa Barbara	\$3.50
2	Butte	\$6.00	Merced	\$5.00	Santa Clara	\$5.50
3	Calaveras	\$3.00	Modoc	\$4.00	Santa Cruz	\$7.00
4	Colusa	\$6.00	Mono	\$5.00	Shasta	\$3.50
5	Contra Costa	\$5.00	Monterey	\$5.00	Sierra	\$7.00
6	Del Norte	\$5.00	Napa	\$3.00	Siskiyou	\$5.00
7	El Dorado	\$5.00	Nevada	\$5.00	Solano	\$5.00
8	Fresno	\$7.00	Orange	\$3.50	Sonoma	\$5.00
9	Glenn	\$4.06	Placer	\$4.75	Stanislaus	\$5.00
10	Humboldt	\$5.00	Plumas	\$5.00	Sutter	\$3.00
11	Imperial	\$6.00	Riverside	\$4.60	Tehama	\$7.00
12	Inyo	\$4.00	Sacramento	\$5.00	Trinity	\$4.26
13	Kern	\$7.00	San Benito	\$5.00	Tulare	\$5.00
14	Kings	\$7.00	San Bernardino	\$5.00	Tuolumne	\$5.00
15	Lake	\$7.00	San Diego	\$5.00	Ventura	\$5.00
16	Lassen	\$2.00	San Francisco	\$6.99	Yolo	\$7.00
17	Los Angeles	\$5.00	San Joaquin	\$3.75	Yuba	\$3.00
18	Madera	\$7.00				

19
20 SEC. 102. Section 76000.5 of the Government Code is amended
21 to read:

22 76000.5. (a) (1) Except as otherwise provided in this section,
23 for purposes of supporting emergency medical services pursuant
24 to Chapter 2.5 (commencing with Section 1797.98a) of Division
25 2.5 of the Health and Safety Code, in addition to the penalties set
26 forth in Section 76000, the county board of supervisors may elect
27 to levy an additional penalty in the amount of two dollars (\$2) for
28 every ten dollars (\$10), or part of ten dollars (\$10), upon every
29 fine, penalty, or forfeiture imposed and collected by the courts for
30 all criminal offenses, including violations of Division 9
31 (commencing with Section 23000) of the Business and Professions
32 Code relating to the control of alcoholic beverages, and all offenses
33 involving a violation of the Vehicle Code or a local ordinance
34 adopted pursuant to the Vehicle Code. This penalty shall be
35 collected together with and in the same manner as the amounts
36 established by Section 1464 of the Penal Code.

37 (2) This additional penalty does not apply to the following:

38 (A) A restitution fine.

39 (B) A penalty authorized by Section 1464 of the Penal Code or
40 this chapter.

1 (C) A parking offense subject to Article 3 (commencing with
2 Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

3 (D) The state surcharge authorized by Section 1465.7 of the
4 Penal Code.

5 (b) Funds shall be collected pursuant to subdivision (a) only if
6 the county board of supervisors provides that the increased
7 penalties do not offset or reduce the funding of other programs
8 from other sources, but that these additional revenues result in
9 increased funding to those programs.

10 (c) Moneys collected pursuant to subdivision (a) shall be taken
11 from fines and forfeitures deposited with the county treasurer prior
12 to any division pursuant to Section 1463 of the Penal Code.

13 (d) Funds collected pursuant to this section shall be deposited
14 into the Maddy Emergency Medical Services (EMS) Fund
15 established pursuant to Section 1797.98a of the Health and Safety
16 Code.

17 (e) This section shall remain in effect only until January 1, 2014,
18 and as of that date is repealed, unless a later enacted statute, that
19 is enacted before January 1, 2014, deletes or extends that date.

20 SEC. 103. Section 76104.6 of the Government Code is amended
21 to read:

22 76104.6. (a) (1) Except as otherwise provided in this section,
23 for the purpose of implementing the DNA Fingerprint, Unsolved
24 Crime and Innocence Protection Act (Proposition 69), as approved
25 by the voters at the November 2, 2004, statewide general election,
26 there shall be levied an additional penalty of one dollar for every
27 ten dollars (\$10), or part of ten dollars (\$10), in each county upon
28 every fine, penalty, or forfeiture imposed and collected by the
29 courts for all criminal offenses, including all offenses involving a
30 violation of the Vehicle Code or a local ordinance adopted pursuant
31 to the Vehicle Code.

32 (2) The penalty imposed by this section shall be collected
33 together with and in the same manner as the amounts established
34 by Section 1464 of the Penal Code. The moneys shall be taken
35 from fines and forfeitures deposited with the county treasurer prior
36 to any division pursuant to Section 1463 of the Penal Code. The
37 board of supervisors shall establish in the county treasury a DNA
38 Identification Fund into which shall be deposited the moneys
39 collected pursuant to this section. The moneys of the fund shall
40 be allocated pursuant to subdivision (b).

1 (3) The additional penalty does not apply to the following:

2 (A) A restitution fine.

3 (B) A penalty authorized by Section 1464 of the Penal Code or
4 this chapter.

5 (C) A parking offense subject to Article 3 (commencing with
6 Section 40200) of Chapter 1 of Division 17 of the Vehicle Code.

7 (D) The state surcharge authorized by Section 1465.7 of the
8 Penal Code.

9 (b) (1) The fund moneys described in subdivision (a), together
10 with any interest earned thereon, shall be held by the county
11 treasurer separate from any funds subject to transfer or division
12 pursuant to Section 1463 of the Penal Code. Deposits to the fund
13 may continue through and including the 20th year after the initial
14 calendar year in which the surcharge is collected, or longer if and
15 as necessary to make payments upon any lease or leaseback
16 arrangement utilized to finance any of the projects specified herein.

17 (2) On the last day of each calendar quarter of the year specified
18 in this subdivision, the county treasurer shall transfer fund moneys
19 in the county's DNA Identification Fund to the Controller for credit
20 to the state's DNA Identification Fund, which is hereby established
21 in the State Treasury, as follows:

22 (A) In the first two calendar years following the effective date
23 of this section, 70 percent of the amounts collected, including
24 interest earned thereon.

25 (B) In the third calendar year following the effective date of
26 this section, 50 percent of the amounts collected, including interest
27 earned thereon.

28 (C) In the fourth calendar year following the effective date of
29 this section and in each calendar year thereafter, 25 percent of the
30 amounts collected, including interest earned thereon.

31 (3) Funds remaining in the county's DNA Identification Fund
32 shall be used only to reimburse local sheriff or other law
33 enforcement agencies to collect DNA specimens, samples, and
34 print impressions pursuant to this chapter; for expenditures and
35 administrative costs made or incurred to comply with the
36 requirements of paragraph (5) of subdivision (b) of Section 298
37 of the Penal Code including the procurement of equipment and
38 software integral to confirming that a person qualifies for entry
39 into the Department of Justice DNA and Forensic Identification
40 Database and Data Bank Program; and to local sheriff, police,

1 district attorney, and regional state crime laboratories for
2 expenditures and administrative costs made or incurred in
3 connection with the processing, analysis, tracking, and storage of
4 DNA crime scene samples from cases in which DNA evidence
5 would be useful in identifying or prosecuting suspects, including
6 the procurement of equipment and software for the processing,
7 analysis, tracking, and storage of DNA crime scene samples from
8 unsolved cases.

9 (4) The state's DNA Identification Fund shall be administered
10 by the Department of Justice. Funds in the state's DNA
11 Identification Fund, upon appropriation by the Legislature, shall
12 be used by the Attorney General only to support DNA testing in
13 the state and to offset the impacts of increased testing and shall be
14 allocated as follows:

15 (A) Of the amount transferred pursuant to subparagraph (A) of
16 paragraph (2) of subdivision (b), 90 percent to the Department of
17 Justice DNA Laboratory, first, to comply with the requirements
18 of Section 298.3 of the Penal Code and, second, for expenditures
19 and administrative costs made or incurred in connection with the
20 processing, analysis, tracking, and storage of DNA specimens and
21 samples including the procurement of equipment and software for
22 the processing, analysis, tracking, and storage of DNA samples
23 and specimens obtained pursuant to the DNA and Forensic
24 Identification Database and Data Bank Act of 1998, as amended
25 (~~Chapter~~ by Chapter 6 (commencing with Section 295) of Title
26 9 of Part 1 of the Penal Code, and 10 percent to the Department
27 of Justice Information Bureau Criminal History Unit for
28 expenditures and administrative costs that have been approved by
29 the Chief of the Department of Justice Bureau of Forensic Services
30 made or incurred to update equipment and software to facilitate
31 compliance with the requirements of subdivision (e) of Section
32 299.5 of the Penal Code.

33 (B) Of the amount transferred pursuant to subparagraph (B) of
34 paragraph (2) of subdivision (b), funds shall be allocated by the
35 Department of Justice DNA Laboratory, first, to comply with the
36 requirements of Section 298.3 of the Penal Code and, second, for
37 expenditures and administrative costs made or incurred in
38 connection with the processing, analysis, tracking, and storage of
39 DNA specimens and samples including the procurement of
40 equipment and software for the processing, analysis, tracking, and

1 storage of DNA samples and specimens obtained pursuant to the
2 DNA and Forensic Identification Database and Data Bank Act of
3 1998, as amended.

4 (C) Of the amount transferred pursuant to subparagraph (C) of
5 paragraph (2) of subdivision (b), funds shall be allocated by the
6 Department of Justice to the DNA Laboratory to comply with the
7 requirements of Section 298.3 of the Penal Code and for
8 expenditures and administrative costs made or incurred in
9 connection with the processing, analysis, tracking, and storage of
10 DNA specimens and samples including the procurement of
11 equipment and software for the processing, analysis, tracking, and
12 storage of DNA samples and specimens obtained pursuant to the
13 DNA and Forensic Identification Database and Data Bank Act of
14 1998, as amended.

15 (c) On or before April 1 in the year following adoption of this
16 section, and annually thereafter, the board of supervisors of each
17 county shall submit a report to the Legislature and the Department
18 of Justice. The report shall include the total amount of fines
19 collected and allocated pursuant to this section, and the amounts
20 expended by the county for each program authorized pursuant to
21 paragraph (3) of subdivision (b). The Department of Justice shall
22 make the reports publicly available on the department's Internet
23 Web site.

24 (d) All requirements imposed on the Department of Justice
25 pursuant to the DNA Fingerprint, Unsolved Crime and Innocence
26 Protection Act are contingent upon the availability of funding and
27 are limited by revenue, on a fiscal year basis, received by the
28 Department of Justice pursuant to this section and any additional
29 appropriation approved by the Legislature for purposes related to
30 implementing this act.

31 (e) Upon approval of the DNA Fingerprint, Unsolved Crime
32 and Innocence Protection Act, the Legislature shall lend the
33 Department of Justice General Fund in the amount of seven million
34 dollars (\$7,000,000) for purposes of implementing the act. The
35 loan shall be repaid with interest calculated at the rate earned by
36 the Pooled Money Investment Account at the time the loan is made.
37 Principal and interest on the loan shall be repaid in full no later
38 than four years from the date the loan was made and shall be repaid
39 from revenue generated pursuant to this section.

(f) Notwithstanding any other provision of law, the Controller may use the state's DNA Identification Fund, created pursuant to paragraph (2) of subdivision (b), for loans to the General Fund as provided in Sections 16310 and 16381. Any such loan shall be repaid from the General Fund with interest computed at 110 percent of the Pooled Money Investment Account rate, with the interest commencing to accrue on the date the loan is made from the fund. This subdivision does not authorize any transfer that will interfere with the carrying out of the object for which the state's DNA Identification Fund was created.

SEC. 104. Section 91530 of the Government Code is amended to read:

91530. (a) Applications for projects or companies not in accordance with the reasonable priorities and criteria that an authority may establish need not be accepted and further processed by an authority.

(b) Acceptance of any application in no way obligates an authority to adopt a resolution of intention or undertake the project proposed.

(c) Upon acceptance of any application and request of a company, the board shall determine whether it is likely that the undertaking of the project by the authority will be a substantial factor in the accrual of one or more of the public benefits from the use of the facilities, including equipment, as proposed in the application, whether the activities or uses are in accord with Section 91503, and whether the project is otherwise in accord with the purposes and requirements of this title.

(d) Upon affirmative determinations under subdivision (c), the board may express the present intention of the authority to issue bonds in connection with the project and shall evidence the same by the adoption of a resolution of intention to undertake the project. The resolution of intention shall briefly describe the facilities, state the estimated principal amount of the bond issue (which estimate shall not limit the amount of bonds which may be issued), indicate whether it is expected that the bonds will be tax-exempt or taxable, and identify the company that is the applicant, and may include other provisions as the board shall prescribe.

(e) A notice of the filing of an application, naming the company that is the applicant, briefly describing the facilities, stating the estimated principal amount of the bond issue and referring to the

1 application for further particulars, shall be published by the
2 secretary of the authority pursuant to Section 6061, and in the
3 event the facilities are proposed to be located in a city and the
4 project is proposed to be undertaken by an authority the jurisdiction
5 of which is countywide, a copy of the notice shall be mailed by
6 the secretary of the authority to the governing body of the city.
7 Any amendment, supplement, or clarification of an application
8 that changes the company that is the applicant, the description of
9 the facilities, or the estimated principal amount of the bond issue,
10 as previously noticed, shall be noticed in the same manner.

11 (f) A copy of the application shall be filed with the public
12 agency. The authority shall not issue bonds with respect to any
13 project unless the public agency shall approve, conditionally or
14 unconditionally, the project, including the issuance of bonds
15 therefor. Action to approve or disapprove a project shall be taken
16 within 45 days of the filing with the public agency. Certification
17 of approval or disapproval shall be made by the clerk of the public
18 agency to the authority. If the governing body has declared itself
19 to be the board pursuant to Section 91523, the approvals and other
20 actions required of the authority or the public agency by this section
21 may be taken and performed on a joint and consolidated basis, as
22 may be deemed practicable in the discretion of the public agency.

23 (g) A resolution of intention may be revoked, amended,
24 supplemented or clarified by the board, at any time prior to entry
25 into the project agreements. The project agreements, indenture,
26 bonds and other proceedings shall be consistent with the resolution
27 of intention, and shall supersede it except to the extent otherwise
28 expressed.

29 SEC. 105. Section 91533 of the Government Code is amended
30 to read:

31 91533. Authorities shall undertake projects by entry into project
32 agreements in substance not inconsistent with the following:

33 (a) The company shall comply with (or cause to be complied
34 with) all legal requirements relating to the project and the
35 operation, repair, and maintenance of the facilities, including (1)
36 obtaining any rezonings or variances, building, development, and
37 other permits and approvals, and licenses and other entitlements
38 for use, without regard to any exemption for public projects and
39 (2) securing the issuance of any certificates of need, convenience,

1 and necessity or other certificates or franchises; and shall provide
2 satisfactory evidence of compliance.

3 (b) The company shall comply with all conditions imposed by
4 the public agency in its approval of the project pursuant to
5 subdivision (f) of Section 91530.

6 (c) The company shall provide, or cause to be provided by
7 others, all amounts required for the project and all property relating
8 to the project that are not to be provided as or by expenditure of
9 bond proceeds, and in the case of any amounts and property that
10 the company proposes to cause to be provided by others, as by
11 contract, grant, subsidy, loan, or other form of assistance, shall
12 provide satisfactory evidence that those amounts and property will
13 be provided when required.

14 (d) Expenditure of bond proceeds shall be supervised to assure
15 proper application to the project.

16 (e) The company shall at its own expense insure, repair, and
17 maintain the facilities, pay taxes with respect to its interests in the
18 property relating to the project as Part 1 (commencing with Section
19 101) of Division 1 of the Revenue and Taxation Code requires,
20 and pay assessments and other public charges secured by liens,
21 upon those interests as constitute the tax base for property taxation
22 on the same basis as other property, or shall cause the same to be
23 provided by others to the satisfaction of the authority.

24 (f) The amounts payable pursuant to the project agreements to
25 or for the benefit of an authority shall in the aggregate not be less
26 than amounts sufficient (1) to pay any bonds that shall be issued
27 by the authority to pay the cost of the project, (2) to maintain any
28 required reserves, (3) to make payments as may be required into
29 any sinking fund or other similar fund, and (4) to pay those
30 administration expenses that relate to the administration of the
31 project agreements, the indenture, and the bonds.

32 (g) The term shall extend at least until the date on which all
33 those bonds and all other obligations incurred by an authority in
34 connection with a project shall have been paid in full or adequate
35 funds for that payment shall have been otherwise provided.

36 (h) The additional provisions as in the determination of the
37 board are necessary or appropriate to effectuate the purposes of
38 this article, including provisions for the following:

39 (1) For payments pursuant to the project agreements that include
40 amounts for administration expenses in addition to the amounts

1 that the agreement is required to obligate the company or others
2 to pay.

3 (2) For payment before a facility exists or becomes functional,
4 or after a facility has ceased to exist or be functional to any extent
5 and from any cause.

6 (3) For payment whether or not the company is in possession
7 or is entitled to be in possession of the facilities or for payment in
8 the event of sale or other transfer of ownership of or the
9 encumbering of the facilities.

10 (4) Relating to the carrying out and completion of the project,
11 including the allocation of responsibility between the authority
12 and the company regarding the payment of administrative expenses
13 and costs of issuance, the acquisition of property, the making of
14 other purchases, the contracting for construction of the facilities,
15 with or without competitive bidding, and the payment therefor and
16 the designation of particular deposits or investments otherwise
17 authorized for the deposit, investment, and reinvestment of
18 revenues.

19 (5) That some or all of the obligations of a company shall be
20 unconditional and shall be binding and enforceable in all
21 circumstances whatsoever notwithstanding any other law.

22 (6) Relating to the use, maintenance, repair, insurance, and
23 replacement of property relating to the project, such as the authority
24 and the company deem necessary for the protection of themselves
25 or others, including, but not limited to, liability insurance, and
26 indemnification in the event of default.

27 (7) Defining events of default and providing remedies therefor,
28 which may include an acceleration of future payments thereunder.

29 (i) The company shall provide for the payment of relocation
30 assistance as provided by Chapter 16 (commencing with Section
31 7260) of Division 7 of Title 1, and shall reimburse the authority
32 or the public agency, as the case may be, for relocation assistance
33 services, and notwithstanding any other provision of this title, the
34 authority shall determine that those services are provided and that
35 relocation assistance payments are made.

36 (j) Notwithstanding any other provision of this title, projects
37 undertaken and carried out pursuant to this title shall be consistent
38 with the requirements of the general plan as contained in Article
39 5 (commencing with Section 65300) of Chapter 3 of Division 1
40 of Title 7 at the time of entry into the project agreement, or in the

1 event inconsistent at that time, then at the time of delivery of any
2 bonds.

3 (k) The company may, pursuant to project agreements, provide
4 or cause to be provided other security, such as, but not limited to,
5 an agreement of guaranty, either of itself or another person, or
6 other consideration directly to the bondholders, their agent or the
7 trustee under an indenture, and neither the company nor any such
8 other person shall be precluded by the project agreements from
9 having other contractual relationships with those bondholders or
10 that agent or trustee.

11 (l) Authorities shall require, whether or not authorities,
12 companies, or others are the contract-awarding bodies, that on any
13 construction, improvement, reconstruction, or rehabilitation
14 financed in whole or in part by means of bonds issued pursuant to
15 this title, the resolution of intention for which is adopted on or
16 after January 1, 1983, all workers employed in that work, exclusive
17 of maintenance work, shall be paid not less than the general
18 prevailing rate of per diem wages for work of a similar character
19 in the locality in which the work is performed, and not less than
20 the general prevailing rate of per diem wages for holiday and
21 overtime work. Those rates shall be determined by the Director of
22 Industrial Relations in accordance with the standards set forth in
23 Section 1773 of the Labor Code. The director's determination shall
24 be final, and Sections 1773.1, 1773.5, 1774, and 1776 (excepting
25 subdivision (f) of Section 1776) of the Labor Code shall apply.

26 SEC. 106. Section 86 of the Harbors and Navigation Code is
27 amended to read:

28 86. (a) The local public agency shall annually certify to the
29 department that for a small craft harbor or boating facility project
30 that is, or has been, funded pursuant to Section 70, 70.2, 70.8, 71.4,
31 72.5, or 76.3, or a harbor constructed with funds from the State
32 Lands Commission from tidelands oil revenues, adequate restroom
33 and sanitary facilities, parking, refuse disposal, vessel pumpout
34 facilities as required pursuant to Section 776, walkways, oil
35 recycling facilities, receptacles for the purpose of separating,
36 reusing, or recycling all solid waste materials, and other necessary
37 shoreside facilities sufficient for the use and operation of all vessels
38 using the harbor or facility are provided or provide written findings
39 showing why the facility cannot certify to these conditions.

(b) A city, county, or district, which has received or is receiving moneys under this division for the construction or improvement of small craft harbors that provides facilities for the operation of commercial fishing vessels registered pursuant to Article 4 (commencing with Section 7880) of Chapter 1 of Part 3 of Division 6 of the Fish and Game Code, shall not prohibit the commercial operation and use of those facilities by commercial passenger fishing vessels of the same or similar displacement, which are licensed pursuant to Section 7920 of the Fish and Game Code, or the use by private recreational vessels unless otherwise expressly provided by law, unless the city, county, or district provides, elsewhere in the same harbor, alternative, equivalent facilities available at comparable cost for the commercial operation and use of commercial passenger fishing vessels and private recreational vessels or unless the city, county, or district adopts written findings showing why the existing facility cannot accommodate the operation of commercial fishing vessels, including commercial passenger fishing vessels, or private recreational vessels and why the facility cannot be modified to do so or why alternative, equivalent facilities cannot be provided in the same harbor to accommodate those operations. This subdivision does not require a facility to accept an application for the operation of an additional commercial passenger fishing boat at that facility if the harbor provides alternative, equivalent, adequate, safe facilities at comparable cost for the operation and use of commercial passenger fishing boats or if accommodations for the operation of the additional commercial passenger fishing boat are not reasonably available at the facility under the contract or agreement.

For the purposes of this subdivision, an alternative, equivalent facility in the same harbor shall provide, at comparable cost, adequate restroom and sanitary facilities, parking, refuse disposal, vessel pumpout facilities, walkways, oil recycling facilities, receptacles for the purpose of separating, reusing, or recycling all solid waste materials, power and water service, and other shoreside facilities and equivalent docks, water channels, navigation aids, and weather protection, including, but not limited to, breakwaters, which are equivalent to the facility funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3.

(c) (1) A loan, grant, contract or agreement, or plan funded pursuant to Section 70, 70.2, 70.8, 71.4, 72.5, or 76.3 for a small

craft harbor or boating facility project shall provide for construction, development, or improvement of facilities to meet the provisions of subdivisions (a) and (b), and provide vehicular access roads to the harbor or facility, as recommended by the Department of Transportation pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code, unless the reasons for not meeting those provisions and recommendations are set forth in the contract or agreement with the department, or an addendum thereto.

(2) The small craft harbor or boating facility shall be designed, constructed, developed, improved, and operated to meet, at a minimum, applicable certification standards described in the Tier 1 standards of the California Green Building Standards Code (Part 11 of Title 24 of the California Code of Regulations).

(d) During the term of any existing or new loan contract made pursuant to Section 71.4 or 76.3, or any existing or new contract or agreement pursuant to Section 70, 70.2, or 70.8, the department shall supervise and monitor compliance with this section and the operation and maintenance of the harbor or facility to assure that the planning, construction, development, or improvement fully complies with this section and the contract or agreement terms and conditions.

(e) For the purposes of this chapter and Article 3 (commencing with Section 70) of Chapter 2, a harbor or facility that is the subject of a contract or agreement as described in subdivision (d), is under the jurisdiction of the department.

SEC. 107. Section 652 of the Harbors and Navigation Code is amended to read:

652. (a) The department may issue regulations to do all of the following:

(1) Establish minimum safety standards for boats and associated equipment.

(2) Require the installation, carrying, or using of associated equipment.

(3) Prohibit the installation, carrying, or using of associated equipment that does not conform with safety standards established pursuant to this chapter.

(b) The regulations shall conform with the federal navigation laws or with the navigation rules promulgated by the United States Coast Guard, or any successor thereto.

1 (c) A person or public agency shall not use or give permission
2 for the use of a vessel that does not carry the equipment or meet
3 the standards established pursuant to this chapter.

4 (d) A peace officer or harbor police officer authorized to enforce
5 this chapter may order the termination of the operation of a vessel
6 that is found to be unsafe for operation pursuant to Section 6550.5
7 of Title 14 of the California Code of Regulations. A violation of
8 an order under this subdivision is a misdemeanor.

9 (e) A person found guilty of a misdemeanor violation of
10 subdivision (d), or of any regulation adopted by the department
11 pursuant to this section, shall be subject to a fine not to exceed one
12 thousand dollars (\$1,000), imprisonment in a county jail not to
13 exceed six months, or both that fine and imprisonment.

14 SEC. 108. Section 1176 of the Harbors and Navigation Code
15 is amended to read:

16 1176. (a) The board shall appoint a physician or physicians
17 who are qualified to determine the suitability of a person to perform
18 his or her duties as a pilot, an inland pilot, or a pilot trainee in
19 accordance with subdivision (c).

20 (b) An applicant for a pilot trainee position or for a pilot license,
21 or an existing pilot trainee, a pilot, or an inland pilot seeking
22 renewal of his or her license shall undergo a physical examination
23 by a board-appointed physician in accordance with standards
24 prescribed by the board. Within 30 days prior to the examination,
25 the applicant or licensee shall submit to the physician conducting
26 the physical examination a complete list of all prescribed
27 medications being taken by or administered to the applicant or
28 licensee.

29 (c) On the basis of both the examination and an evaluation of
30 the effects of the prescription medications named on the submitted
31 list, the physician shall designate to the board whether or not the
32 pilot, inland pilot, or pilot trainee is fit to perform his or her duties
33 as a pilot, an inland pilot, or a pilot trainee.

34 (d) The license of a pilot or an inland pilot shall not be renewed
35 unless he or she is found fit for duty pursuant to subdivision (c).

36 (e) Whenever a pilot, an inland pilot, or a pilot trainee is
37 prescribed either a new dosage of a medication or a new
38 medication, or suspends the use of a prescribed medication, he or
39 she shall, within 10 days, submit that information to the
40 board-appointed physician having possession of the prescribed

1 medication list submitted pursuant to subdivision (b). Whenever
2 the physician receives the updated information, the physician shall
3 determine whether or not the medication change affects the
4 licensee's or trainee's fitness for duty. If the physician determines
5 that the medication change results in the pilot, inland pilot, or pilot
6 trainee being unfit for duty, the physician shall inform the board.

7 (f) The board may terminate a pilot trainee or suspend or revoke
8 the license of a pilot or an inland pilot who fails to submit the
9 prescribed medication information required by this section.

10 SEC. 109. Section 5864 of the Harbors and Navigation Code
11 is amended to read:

12 5864. The ballot to be used at the election shall be substantially
13 in the following form:

14
15 HARBOR DISTRICT

16
17 OFFICIAL BALLOT

18
19 Instructions to voters: To vote in favor of the formation of the
20 harbor district and the incurring of the indebtedness thereby, mark
21 in the voting area at the right of the words "For the harbor district."

22 To vote against the formation of the harbor district and the
23 incurring of the indebtedness thereby, mark in the voting area at
24 the right of the words "Against the harbor district."

25 All erasures and distinguishing marks are forbidden and make
26 the ballot void. If you wrongly stamp, tear, or deface this ballot,
27 return it to the inspector of elections and obtain another.

28
29 PROPOSITION

30
31 "For the harbor district" (here set forth a general statement of
32 the purposes for which the indebtedness is to be incurred, and the
33 amount of the indebtedness).

34 "Against the harbor district" (here set forth a general statement
35 of the purposes for which the indebtedness is to be incurred and
36 the amount of the indebtedness).

37 SEC. 110. Section 6035 of the Harbors and Navigation Code
38 is amended to read:

39 6035. The ballot to be used at the election shall be substantially
40 in the following form:

(Name) Harbor District Official Ballot

Instructions to voters: to vote in favor of the formation of the harbor district, mark in the voting area at the right of the words "For the harbor district." To vote against the formation of the harbor district mark in the voting area at the right of the words "Against the harbor district." To vote for a candidate for harbor commissioner mark after the name of the candidate; but no more persons shall be voted for than there are offices of harbor commissioner to be filled at this election.

All erasures and distinguishing marks are forbidden and make the ballot void. If you wrongfully stamp, tear, or deface this ballot, return it to the inspector of elections and obtain another.

"For the harbor district."

"Against the harbor district."

"For harbor commissioners."

SEC. 111. Section 1261.5 of the Health and Safety Code is amended to read:

1261.5. (a) The number of oral dosage form or suppository form drugs provided by a pharmacy to a health facility licensed pursuant to subdivision (c) or (d), or both subdivisions (c) and (d), of Section 1250 of this code for storage in a secured emergency supplies container, pursuant to Section 4119 of the Business and Professions Code, shall be limited to 48. The State Department of Public Health may limit the number of doses of each drug available to not more than 16 doses of any separate drug dosage form in each emergency supply.

(b) Not more than four of the 48 oral form or suppository form drugs secured for storage in the emergency supplies container shall be psychotherapeutic drugs, except that the department may grant a program flexibility request to the facility to increase the number of psychotherapeutic drugs in the emergency supplies container to not more than 10 if the facility can demonstrate the necessity for an increased number of drugs based on the needs of the patient population at the facility. In addition, the four oral form or suppository form psychotherapeutic drug limit shall not apply to a special treatment program service unit distinct part, as defined in Section 1276.9. The department shall limit the number of doses of psychotherapeutic drugs available to not more than four doses

1 in each emergency supply. Nothing in this section shall alter or
2 diminish informed consent requirements, including, but not limited
3 to, the requirements of Section 1418.9.

4 (c) Any limitations established pursuant to subdivisions (a) and
5 (b) on the number and quantity of oral dosage or suppository form
6 drugs provided by a pharmacy to a health facility licensed pursuant
7 to subdivision (c) or (d), or both subdivisions (c) and (d), of Section
8 1250 for storage in a secured emergency supplies container shall
9 not apply to an automated drug delivery system, as defined in
10 Section 1261.6, when a pharmacist controls access to the drugs.

11 SEC. 112. Section 1289.4 of the Health and Safety Code is
12 amended to read:

13 1289.4. A theft and loss program shall be implemented by the
14 long-term health care facilities within 90 days after January 1,
15 1988. The program shall include all of the following:

16 (a) Establishment and posting of the facility's policy regarding
17 theft and investigative procedures.

18 (b) Orientation to the policies and procedures for all employees
19 within 90 days of employment.

20 (c) Documentation of lost and stolen patient property with a
21 value of twenty-five dollars (\$25) or more and, upon request, the
22 documented theft and loss record for the past 12 months shall be
23 made available to the State Department of Public Health, the county
24 health department or law enforcement agencies, and to the office
25 of the State Long-Term Care Ombudsman in response to a specific
26 complaint. The documentation shall include, but not be limited to,
27 the following:

28 (1) A description of the article.

29 (2) Its estimated value.

30 (3) The date and time the theft or loss was discovered.

31 (4) If determinable, the date and time the loss or theft occurred.

32 (5) The action taken.

33 (d) A written patient personal property inventory is established
34 upon admission and retained during the resident's stay in the
35 long-term health care facility. A copy of the written inventory shall
36 be provided to the resident or the person acting on the resident's
37 behalf. Subsequent items brought into or removed from the facility
38 shall be added to or deleted from the personal property inventory
39 by the facility at the written request of the resident, the resident's
40 family, a responsible party, or a person acting on behalf of a

1 resident. The facility shall not be liable for items which have not
2 been requested to be included in the inventory or for items which
3 have been deleted from the inventory. A copy of a current inventory
4 shall be made available upon request to the resident, responsible
5 party, or other authorized representative. The resident, resident's
6 family, or a responsible party may list those items that are not
7 subject to addition or deletion from the inventory, such as personal
8 clothing or laundry, that are subject to frequent removal from the
9 facility.

10 (e) Inventory and surrender of the resident's personal effects
11 and valuables upon discharge to the resident or authorized
12 representative in exchange for a signed receipt.

13 (f) Inventory and surrender of personal effects and valuables
14 following the death of a resident to the authorized representative
15 in exchange for a signed receipt. Immediate notice to the public
16 administrator of the county upon the death of a resident without
17 known next of kin as provided in Section 7600.5 of the Probate
18 Code.

19 (g) Documentation, at least semiannually, of the facility's efforts
20 to control theft and loss, including the review of theft and loss
21 documentation and investigative procedures and results of the
22 investigation by the administrator and, when feasible, the resident
23 council.

24 (h) Establishment of a method of marking, to the extent feasible,
25 personal property items for identification purposes upon admission
26 and, as added to the property inventory list, including engraving
27 of dentures and tagging of other prosthetic devices.

28 (i) Reports to the local law enforcement agency within 36 hours
29 when the administrator of the facility has reason to believe patient
30 property with a then-current value of one hundred dollars (\$100)
31 or more has been stolen. Copies of those reports for the preceding
32 12 months shall be made available to the State Department of
33 Public Health and law enforcement agencies.

34 (j) Maintenance of a secured area for patients' property which
35 is available for safekeeping of patient property upon the request
36 of the patient or the patient's responsible party. Provide a lock for
37 the resident's bedside drawer or cabinet upon request of and at the
38 expense of the resident, the resident's family, or authorized
39 representative. The facility administrator shall have access to the
40 locked areas upon request.

1 (k) A copy of this section and Sections 1289.3 and 1289.5 is
2 provided by a facility to all of the residents and their responsible
3 parties, and, available upon request, to all of the facility's
4 prospective residents and their responsible parties.

5 (l) Notification to all current residents and all new residents,
6 upon admission, of the facility's policies and procedures relating
7 to the facility's theft and loss prevention program.

8 SEC. 113. Section 1348.8 of the Health and Safety Code is
9 amended to read:

10 1348.8. (a) A health care service plan that provides, operates,
11 or contracts for telephone medical advice services to its enrollees
12 and subscribers shall do all of the following:

13 (1) Ensure that the in-state or out-of-state telephone medical
14 advice service is registered pursuant to Chapter 15 (commencing
15 with Section 4999) of Division 2 of the Business and Professions
16 Code.

17 (2) Ensure that the staff providing telephone medical advice
18 services for the in-state or out-of-state telephone medical advice
19 service are licensed as follows:

20 (A) For full service health care service plans, the staff hold a
21 valid California license as a registered nurse or a valid license in
22 the state within which they provide telephone medical advice
23 services as a physician and surgeon or physician assistant, and are
24 operating in compliance with the laws governing their respective
25 scopes of practice.

26 (B) (i) For specialized health care service plans providing,
27 operating, or contracting with a telephone medical advice service
28 in California, the staff shall be appropriately licensed, registered,
29 or certified as a dentist pursuant to Chapter 4 (commencing with
30 Section 1600) of Division 2 of the Business and Professions Code,
31 as a dental hygienist pursuant to Article 7 (commencing with
32 Section 1740) of Chapter 4 of Division 2 of the Business and
33 Professions Code, as a physician and surgeon pursuant to Chapter
34 5 (commencing with Section 2000) of Division 2 of the Business
35 and Professions Code or the Osteopathic Initiative Act, as a
36 registered nurse pursuant to Chapter 6 (commencing with Section
37 2700) of Division 2 of the Business and Professions Code, as a
38 psychologist pursuant to Chapter 6.6 (commencing with Section
39 2900) of Division 2 of the Business and Professions Code, as an
40 optometrist pursuant to Chapter 7 (commencing with Section 3000)

1 of Division 2 of the Business and Professions Code, as a marriage
2 and family therapist pursuant to Chapter 13 (commencing with
3 Section 4980) of Division 2 of the Business and Professions Code,
4 as a licensed clinical social worker pursuant to Chapter 14
5 (commencing with Section 4991) of Division 2 of the Business
6 and Professions Code, or as a chiropractor pursuant to the
7 Chiropractic Initiative Act, and operating in compliance with the
8 laws governing their respective scopes of practice.

9 (ii) For specialized health care service plans providing,
10 operating, or contracting with an out-of-state telephone medical
11 advice service, the staff shall be health care professionals, as
12 identified in clause (i), who are licensed, registered, or certified
13 in the state within which they are providing the telephone medical
14 advice services and are operating in compliance with the laws
15 governing their respective scopes of practice. All registered nurses
16 providing telephone medical advice services to both in-state and
17 out-of-state business entities registered pursuant to this chapter
18 shall be licensed pursuant to Chapter 6 (commencing with Section
19 2700) of Division 2 of the Business and Professions Code.

20 (3) Ensure that every full service health care service plan
21 provides for a physician and surgeon who is available on an on-call
22 basis at all times the service is advertised to be available to
23 enrollees and subscribers.

24 (4) Ensure that staff members handling enrollee or subscriber
25 calls, who are not licensed, certified, or registered as required by
26 paragraph (2), do not provide telephone medical advice. Those
27 staff members may ask questions on behalf of a staff member who
28 is licensed, certified, or registered as required by paragraph (2),
29 in order to help ascertain the condition of an enrollee or subscriber
30 so that the enrollee or subscriber can be referred to licensed staff.
31 However, under no circumstances shall those staff members use
32 the answers to those questions in an attempt to assess, evaluate,
33 advise, or make any decision regarding the condition of an enrollee
34 or subscriber or determine when an enrollee or subscriber needs
35 to be seen by a licensed medical professional.

36 (5) Ensure that no staff member uses a title or designation when
37 speaking to an enrollee or subscriber that may cause a reasonable
38 person to believe that the staff member is a licensed, certified, or
39 registered professional described in Section 4999.2 of the Business

1 and Professions Code unless the staff member is a licensed,
2 certified, or registered professional.

3 (6) Ensure that the in-state or out-of-state telephone medical
4 advice service designates an agent for service of process in
5 California and files this designation with the director.

6 (7) Requires that the in-state or out-of-state telephone medical
7 advice service makes and maintains records for a period of five
8 years after the telephone medical advice services are provided,
9 including, but not limited to, oral or written transcripts of all
10 medical advice conversations with the health care service plan's
11 enrollees or subscribers in California and copies of all complaints.
12 If the records of telephone medical advice services are kept out of
13 state, the health care service plan shall, upon the request of the
14 director, provide the records to the director within 10 days of the
15 request.

16 (8) Ensure that the telephone medical advice services are
17 provided consistent with good professional practice.

18 (b) The director shall forward to the Department of Consumer
19 Affairs, within 30 days of the end of each calendar quarter, data
20 regarding complaints filed with the department concerning
21 telephone medical advice services.

22 (c) For purposes of this section, "telephone medical advice"
23 means a telephonic communication between a patient and a health
24 care professional in which the health care professional's primary
25 function is to provide to the patient a telephonic response to the
26 patient's questions regarding his or her or a family member's
27 medical care or treatment. "Telephone medical advice" includes
28 assessment, evaluation, or advice provided to patients or their
29 family members.

30 SEC. 114. Section 1357 of the Health and Safety Code is
31 amended to read:

32 1357. As used in this article:

33 (a) "Dependent" means the spouse or child of an eligible
34 employee, subject to applicable terms of the health care plan
35 contract covering the employee, and includes dependents of
36 guaranteed association members if the association elects to include
37 dependents under its health coverage at the same time it determines
38 its membership composition pursuant to subdivision (o).

39 (b) "Eligible employee" means either of the following:

(1) Any permanent employee who is actively engaged on a full-time basis in the conduct of the business of the small employer with a normal workweek of at least 30 hours, at the small employer's regular places of business, who has met any statutorily authorized applicable waiting period requirements. The term includes sole proprietors or partners of a partnership, if they are actively engaged on a full-time basis in the small employer's business and included as employees under a health care plan contract of a small employer, but does not include employees who work on a part-time, temporary, or substitute basis. It includes any eligible employee, as defined in this paragraph, who obtains coverage through a guaranteed association. Employees of employers purchasing through a guaranteed association shall be deemed to be eligible employees if they would otherwise meet the definition except for the number of persons employed by the employer. Permanent employees who work at least 20 hours but not more than 29 hours are deemed to be eligible employees if all four of the following apply:

(A) They otherwise meet the definition of an eligible employee except for the number of hours worked.

(B) The employer offers the employees health coverage under a health benefit plan.

(C) All similarly situated individuals are offered coverage under the health benefit plan.

(D) The employee must have worked at least 20 hours per normal workweek for at least 50 percent of the weeks in the previous calendar quarter. The health care service plan may request any necessary information to document the hours and time period in question, including, but not limited to, payroll records and employee wage and tax filings.

(2) Any member of a guaranteed association as defined in subdivision (o).

(c) "In force business" means an existing health benefit plan contract issued by the plan to a small employer.

(d) "Late enrollee" means an eligible employee or dependent who has declined enrollment in a health benefit plan offered by a small employer at the time of the initial enrollment period provided under the terms of the health benefit plan and who subsequently requests enrollment in a health benefit plan of that small employer, provided that the initial enrollment period shall be a period of at

1 least 30 days. It also means any member of an association that is
 2 a guaranteed association as well as any other person eligible to
 3 purchase through the guaranteed association when that person has
 4 failed to purchase coverage during the initial enrollment period
 5 provided under the terms of the guaranteed association's plan
 6 contract and who subsequently requests enrollment in the plan,
 7 provided that the initial enrollment period shall be a period of at
 8 least 30 days. However, an eligible employee, any other person
 9 eligible for coverage through a guaranteed association pursuant to
 10 subdivision (o), or an eligible dependent shall not be considered
 11 a late enrollee if any of the following is applicable:

12 (1) The individual meets all of the following requirements:

13 (A) He or she was covered under another employer health
 14 benefit plan, the Healthy Families Program, the Access for Infants
 15 and Mothers (AIM) Program, or the Medi-Cal program at the time
 16 the individual was eligible to enroll.

17 (B) He or she certified at the time of the initial enrollment that
 18 coverage under another employer health benefit plan, the Healthy
 19 Families Program, the AIM Program, or the Medi-Cal program
 20 was the reason for declining enrollment, provided that, if the
 21 individual was covered under another employer health plan, the
 22 individual was given the opportunity to make the certification
 23 required by this subdivision and was notified that failure to do so
 24 could result in later treatment as a late enrollee.

25 (C) He or she has lost or will lose coverage under another
 26 employer health benefit plan as a result of termination of
 27 employment of the individual or of a person through whom the
 28 individual was covered as a dependent, change in employment
 29 status of the individual or of a person through whom the individual
 30 was covered as a dependent, termination of the other plan's
 31 coverage, cessation of an employer's contribution toward an
 32 employee or dependent's coverage, death of the person through
 33 whom the individual was covered as a dependent, legal separation,
 34 or divorce; or he or she has lost or will lose coverage under the
 35 Healthy Families Program, the AIM Program, or the Medi-Cal
 36 program.

37 (D) He or she requests enrollment within 30 days after
 38 termination of coverage or employer contribution toward coverage
 39 provided under another employer health benefit plan, or requests
 40 enrollment within 60 days after termination of Medi-Cal program

1 coverage, AIM Program coverage, or Healthy Families Program
2 coverage.

3 (2) The employer offers multiple health benefit plans and the
4 employee elects a different plan during an open enrollment period.

5 (3) A court has ordered that coverage be provided for a spouse
6 or minor child under a covered employee's health benefit plan.

7 (4) (A) In the case of an eligible employee, as defined in
8 paragraph (1) of subdivision (b), the plan cannot produce a written
9 statement from the employer stating that the individual or the
10 person through whom the individual was eligible to be covered as
11 a dependent, prior to declining coverage, was provided with, and
12 signed, acknowledgment of an explicit written notice in boldface
13 type specifying that failure to elect coverage during the initial
14 enrollment period permits the plan to impose, at the time of the
15 individual's later decision to elect coverage, an exclusion from
16 coverage for a period of 12 months as well as a six-month
17 preexisting condition exclusion, unless the individual meets the
18 criteria specified in paragraph (1), (2), or (3).

19 (B) In the case of an association member who did not purchase
20 coverage through a guaranteed association, the plan cannot produce
21 a written statement from the association stating that the association
22 sent a written notice in boldface type to all potentially eligible
23 association members at their last known address prior to the initial
24 enrollment period informing members that failure to elect coverage
25 during the initial enrollment period permits the plan to impose, at
26 the time of the member's later decision to elect coverage, an
27 exclusion from coverage for a period of 12 months as well as a
28 six-month preexisting condition exclusion unless the member can
29 demonstrate that he or she meets the requirements of subparagraphs
30 (A), (C), and (D) of paragraph (1) or meets the requirements of
31 paragraph (2) or (3).

32 (C) In the case of an employer or person who is not a member
33 of an association, was eligible to purchase coverage through a
34 guaranteed association, and did not do so, and would not be eligible
35 to purchase guaranteed coverage unless purchased through a
36 guaranteed association, the employer or person can demonstrate
37 that he or she meets the requirements of subparagraphs (A), (C),
38 and (D) of paragraph (1), or meets the requirements of paragraph
39 (2) or (3), or that he or she recently had a change in status that

1 would make him or her eligible and that application for enrollment
2 was made within 30 days of the change.

3 (5) The individual is an employee or dependent who meets the
4 criteria described in paragraph (1) and was under a COBRA
5 continuation provision and the coverage under that provision has
6 been exhausted. For purposes of this section, the definition of
7 “COBRA” set forth in subdivision (e) of Section 1373.621 shall
8 apply.

9 (6) The individual is a dependent of an enrolled eligible
10 employee who has lost or will lose his or her coverage under the
11 Healthy Families Program, the AIM Program, or the Medi-Cal
12 program and requests enrollment within 60 days after termination
13 of that coverage.

14 (7) The individual is an eligible employee who previously
15 declined coverage under an employer health benefit plan and who
16 has subsequently acquired a dependent who would be eligible for
17 coverage as a dependent of the employee through marriage, birth,
18 adoption, or placement for adoption, and who enrolls for coverage
19 under that employer health benefit plan on his or her behalf and
20 on behalf of his or her dependent within 30 days following the
21 date of marriage, birth, adoption, or placement for adoption, in
22 which case the effective date of coverage shall be the first day of
23 the month following the date the completed request for enrollment
24 is received in the case of marriage, or the date of birth, or the date
25 of adoption or placement for adoption, whichever applies. Notice
26 of the special enrollment rights contained in this paragraph shall
27 be provided by the employer to an employee at or before the time
28 the employee is offered an opportunity to enroll in plan coverage.

29 (8) The individual is an eligible employee who has declined
30 coverage for himself or herself or his or her dependents during a
31 previous enrollment period because his or her dependents were
32 covered by another employer health benefit plan at the time of the
33 previous enrollment period. That individual may enroll himself or
34 herself or his or her dependents for plan coverage during a special
35 open enrollment opportunity if his or her dependents have lost or
36 will lose coverage under that other employer health benefit plan.
37 The special open enrollment opportunity shall be requested by the
38 employee not more than 30 days after the date that the other health
39 coverage is exhausted or terminated. Upon enrollment, coverage
40 shall be effective not later than the first day of the first calendar

1 month beginning after the date the request for enrollment is
2 received. Notice of the special enrollment rights contained in this
3 paragraph shall be provided by the employer to an employee at or
4 before the time the employee is offered an opportunity to enroll
5 in plan coverage.

6 (e) “New business” means a health care service plan contract
7 issued to a small employer that is not the plan’s in force business.

8 (f) “Preexisting condition provision” means a contract provision
9 that excludes coverage for charges or expenses incurred during a
10 specified period following the employee’s effective date of
11 coverage, as to a condition for which medical advice, diagnosis,
12 care, or treatment was recommended or received during a specified
13 period immediately preceding the effective date of coverage.

14 (g) “Creditable coverage” means:

15 (1) Any individual or group policy, contract, or program that is
16 written or administered by a disability insurer, health care service
17 plan, fraternal benefits society, self-insured employer plan, or any
18 other entity, in this state or elsewhere, and that arranges or provides
19 medical, hospital, and surgical coverage not designed to supplement
20 other private or governmental plans. The term includes continuation
21 or conversion coverage but does not include accident only, credit,
22 coverage for onsite medical clinics, disability income, Medicare
23 supplement, long-term care, dental, vision, coverage issued as a
24 supplement to liability insurance, insurance arising out of a
25 workers’ compensation or similar law, automobile medical payment
26 insurance, or insurance under which benefits are payable with or
27 without regard to fault and that is statutorily required to be
28 contained in any liability insurance policy or equivalent
29 self-insurance.

30 (2) The Medicare Program pursuant to Title XVIII of the federal
31 Social Security Act (42 U.S.C. Sec. 1395 et seq.).

32 (3) The Medicaid Program pursuant to Title XIX of the federal
33 Social Security Act (42 U.S.C. Sec. 1396 et seq.).

34 (4) Any other publicly sponsored program, provided in this state
35 or elsewhere, of medical, hospital, and surgical care.

36 (5) 10 U.S.C. Chapter 55 (commencing with Section 1071)
37 (Civilian Health and Medical Program of the Uniformed Services
38 (CHAMPUS)).

39 (6) A medical care program of the Indian Health Service or of
40 a tribal organization.

1 (7) A state health benefits risk pool.

2 (8) A health plan offered under 5 U.S.C. Chapter 89
3 (commencing with Section 8901) (Federal Employees Health
4 Benefits Program (FEHBP)).

5 (9) A public health plan as defined in federal regulations
6 authorized by Section 2701(c)(1)(I) of the Public Health Service
7 Act, as amended by Public Law 104-191, the Health Insurance
8 Portability and Accountability Act of 1996.

9 (10) A health benefit plan under Section 5(e) of the Peace Corps
10 Act (22 U.S.C. Sec. 2504(e)).

11 (11) Any other creditable coverage as defined by subdivision
12 (c) of Section 2701 of Title XXVII of the federal Public Health
13 Services Act (42 U.S.C. Sec. 300gg(c)).

14 (h) “Rating period” means the period for which premium rates
15 established by a plan are in effect and shall be no less than six
16 months.

17 (i) “Risk adjusted employee risk rate” means the rate determined
18 for an eligible employee of a small employer in a particular risk
19 category after applying the risk adjustment factor.

20 (j) “Risk adjustment factor” means the percentage adjustment
21 to be applied equally to each standard employee risk rate for a
22 particular small employer, based upon any expected deviations
23 from standard cost of services. This factor may not be more than
24 120 percent or less than 80 percent until July 1, 1996. Effective
25 July 1, 1996, this factor may not be more than 110 percent or less
26 than 90 percent.

27 (k) “Risk category” means the following characteristics of an
28 eligible employee: age, geographic region, and family composition
29 of the employee, plus the health benefit plan selected by the small
30 employer.

31 (1) No more than the following age categories may be used in
32 determining premium rates:

33 Under 30

34 30–39

35 40–49

36 50–54

37 55–59

38 60–64

39 65 and over

1 However, for the 65 and over age category, separate premium
2 rates may be specified depending upon whether coverage under
3 the plan contract will be primary or secondary to benefits provided
4 by the Medicare Program pursuant to Title XVIII of the federal
5 Social Security Act (42 U.S.C. Sec. 1395 et seq.).

6 (2) Small employer health care service plans shall base rates to
7 small employers using no more than the following family size
8 categories:

9 (A) Single.

10 (B) Married couple.

11 (C) One adult and child or children.

12 (D) Married couple and child or children.

13 (3) (A) In determining rates for small employers, a plan that
14 operates statewide shall use no more than nine geographic regions
15 in the state, have no region smaller than an area in which the first
16 three digits of all its ZIP Codes are in common within a county,
17 and divide no county into more than two regions. Plans shall be
18 deemed to be operating statewide if their coverage area includes
19 90 percent or more of the state's population. Geographic regions
20 established pursuant to this section shall, as a group, cover the
21 entire state, and the area encompassed in a geographic region shall
22 be separate and distinct from areas encompassed in other
23 geographic regions. Geographic regions may be noncontiguous.

24 (B) (i) In determining rates for small employers, a plan that
25 does not operate statewide shall use no more than the number of
26 geographic regions in the state that is determined by the following
27 formula: the population, as determined in the last federal census,
28 of all counties that are included in their entirety in a plan's service
29 area divided by the total population of the state, as determined in
30 the last federal census, multiplied by nine. The resulting number
31 shall be rounded to the nearest whole integer. No region may be
32 smaller than an area in which the first three digits of all its ZIP
33 Codes are in common within a county and no county may be
34 divided into more than two regions. The area encompassed in a
35 geographic region shall be separate and distinct from areas
36 encompassed in other geographic regions. Geographic regions
37 may be noncontiguous. No plan shall have less than one geographic
38 area.

39 (ii) If the formula in clause (i) results in a plan that operates in
40 more than one county having only one geographic region, then the

1 formula in clause (i) shall not apply and the plan may have two
2 geographic regions, provided that no county is divided into more
3 than one region.

4 Nothing in this section shall be construed to require a plan to
5 establish a new service area or to offer health coverage on a
6 statewide basis, outside of the plan's existing service area.

7 (l) "Small employer" means either of the following:

8 (1) Any person, firm, proprietary or nonprofit corporation,
9 partnership, public agency, or association that is actively engaged
10 in business or service, that, on at least 50 percent of its working
11 days during the preceding calendar quarter or preceding calendar
12 year, employed at least two, but no more than 50, eligible
13 employees, the majority of whom were employed within this state,
14 that was not formed primarily for purposes of buying health care
15 service plan contracts, and in which a bona fide employer-employee
16 relationship exists. In determining whether to apply the calendar
17 quarter or calendar year test, a health care service plan shall use
18 the test that ensures eligibility if only one test would establish
19 eligibility. However, for purposes of subdivisions (a), (b), and (c)
20 of Section 1357.03, the definition shall include employers with at
21 least three eligible employees until July 1, 1997, and two eligible
22 employees thereafter. In determining the number of eligible
23 employees, companies that are affiliated companies and that are
24 eligible to file a combined tax return for purposes of state taxation
25 shall be considered one employer. Subsequent to the issuance of
26 a health care service plan contract to a small employer pursuant
27 to this article, and for the purpose of determining eligibility, the
28 size of a small employer shall be determined annually. Except as
29 otherwise specifically provided in this article, provisions of this
30 article that apply to a small employer shall continue to apply until
31 the plan contract anniversary following the date the employer no
32 longer meets the requirements of this definition. It includes any
33 small employer as defined in this paragraph who purchases
34 coverage through a guaranteed association, and any employer
35 purchasing coverage for employees through a guaranteed
36 association.

37 (2) Any guaranteed association, as defined in subdivision (n),
38 that purchases health coverage for members of the association.

1 (m) “Standard employee risk rate” means the rate applicable to
2 an eligible employee in a particular risk category in a small
3 employer group.

4 (n) “Guaranteed association” means a nonprofit organization
5 comprised of a group of individuals or employers who associate
6 based solely on participation in a specified profession or industry,
7 accepting for membership any individual or employer meeting its
8 membership criteria, and that (1) includes one or more small
9 employers as defined in paragraph (1) of subdivision (l), (2) does
10 not condition membership directly or indirectly on the health or
11 claims history of any person, (3) uses membership dues solely for
12 and in consideration of the membership and membership benefits,
13 except that the amount of the dues shall not depend on whether
14 the member applies for or purchases insurance offered to the
15 association, (4) is organized and maintained in good faith for
16 purposes unrelated to insurance, (5) has been in active existence
17 on January 1, 1992, and for at least five years prior to that date,
18 (6) has included health insurance as a membership benefit for at
19 least five years prior to January 1, 1992, (7) has a constitution and
20 bylaws, or other analogous governing documents that provide for
21 election of the governing board of the association by its members,
22 (8) offers any plan contract that is purchased to all individual
23 members and employer members in this state, (9) includes any
24 member choosing to enroll in the plan contracts offered to the
25 association provided that the member has agreed to make the
26 required premium payments, and (10) covers at least 1,000 persons
27 with the health care service plan with which it contracts. The
28 requirement of 1,000 persons may be met if component chapters
29 of a statewide association contracting separately with the same
30 carrier cover at least 1,000 persons in the aggregate.

31 This subdivision applies regardless of whether a contract issued
32 by a plan is with an association, or a trust formed for or sponsored
33 by an association, to administer benefits for association members.

34 For purposes of this subdivision, an association formed by a
35 merger of two or more associations after January 1, 1992, and
36 otherwise meeting the criteria of this subdivision shall be deemed
37 to have been in active existence on January 1, 1992, if its
38 predecessor organizations had been in active existence on January
39 1, 1992, and for at least five years prior to that date and otherwise
40 met the criteria of this subdivision.

1 (o) “Members of a guaranteed association” means any individual
2 or employer meeting the association’s membership criteria if that
3 person is a member of the association and chooses to purchase
4 health coverage through the association. At the association’s
5 discretion, it also may include employees of association members,
6 association staff, retired members, retired employees of members,
7 and surviving spouses and dependents of deceased members.
8 However, if an association chooses to include these persons as
9 members of the guaranteed association, the association shall make
10 that election in advance of purchasing a plan contract. Health care
11 service plans may require an association to adhere to the
12 membership composition it selects for up to 12 months.

13 (p) “Affiliation period” means a period that, under the terms of
14 the health care service plan contract, must expire before health
15 care services under the contract become effective.

16 SEC. 115. Section 1357.50 of the Health and Safety Code is
17 amended to read:

18 1357.50. For purposes of this article:

19 (a) “Health benefit plan” means any individual or group
20 insurance policy or health care service plan contract that provides
21 medical, hospital, and surgical benefits. The term does not include
22 accident only, credit, disability income, coverage of Medicare
23 services pursuant to contracts with the United States government,
24 Medicare supplement, long-term care insurance, dental, vision,
25 coverage issued as a supplement to liability insurance, insurance
26 arising out of a workers’ compensation or similar law, automobile
27 medical payment insurance, or insurance under which benefits are
28 payable with or without regard to fault and that is statutorily
29 required to be contained in any liability insurance policy or
30 equivalent self-insurance.

31 (b) “Late enrollee” means an eligible employee or dependent
32 who has declined health coverage under a health benefit plan
33 offered through employment or sponsored by an employer at the
34 time of the initial enrollment period provided under the terms of
35 the health benefit plan, and who subsequently requests enrollment
36 in a health benefit plan of that employer, provided that the initial
37 enrollment period shall be a period of at least 30 days. However,
38 an eligible employee or dependent shall not be considered a late
39 enrollee if any of the following is applicable:

40 (1) The individual meets all of the following requirements:

1 (A) The individual was covered under another employer health
2 benefit plan, the Healthy Families Program, the Access for Infants
3 and Mothers (AIM) Program, or the Medi-Cal program at the time
4 the individual was eligible to enroll.

5 (B) The individual certified, at the time of the initial enrollment,
6 that coverage under another employer health benefit plan, the
7 Healthy Families Program, the AIM Program, or the Medi-Cal
8 program was the reason for declining enrollment provided that, if
9 the individual was covered under another employer health benefit
10 plan, the individual was given the opportunity to make the
11 certification required by this subdivision and was notified that
12 failure to do so could result in later treatment as a late enrollee.

13 (C) The individual has lost or will lose coverage under another
14 employer health benefit plan as a result of termination of
15 employment of the individual or of a person through whom the
16 individual was covered as a dependent, change in employment
17 status of the individual or of a person through whom the individual
18 was covered as a dependent, termination of the other plan's
19 coverage, cessation of an employer's contribution toward an
20 employee or dependent's coverage, death of a person through
21 whom the individual was covered as a dependent, legal separation,
22 or divorce; or the individual has lost or will lose coverage under
23 the Healthy Families Program, the AIM Program, or the Medi-Cal
24 program.

25 (D) The individual requests enrollment within 30 days after
26 termination of coverage, or cessation of employer contribution
27 toward coverage provided under another employer health benefit
28 plan, or requests enrollment within 60 days after termination of
29 Medi-Cal program coverage, AIM Program coverage, or Healthy
30 Families Program coverage.

31 (2) The individual is employed by an employer that offers
32 multiple health benefit plans and the individual elects a different
33 plan during an open enrollment period.

34 (3) A court has ordered that coverage be provided for a spouse
35 or minor child under a covered employee's health benefit plan.
36 The health benefit plan shall enroll a dependent child within 30
37 days after receipt of a court order or request from the district
38 attorney, either parent or the person having custody of the child
39 as defined in Section 3751.5 of the Family Code, the employer,
40 or the group administrator. In the case of children who are eligible

1 for Medicaid, the State Department of Health Care Services may
2 also make the request.

3 (4) The plan cannot produce a written statement from the
4 employer stating that, prior to declining coverage, the individual
5 or the person through whom the individual was eligible to be
6 covered as a dependent was provided with, and signed
7 acknowledgment of, explicit written notice in boldface type
8 specifying that failure to elect coverage during the initial
9 enrollment period permits the plan to impose, at the time of the
10 individual's later decision to elect coverage, an exclusion from
11 coverage for a period of 12 months as well as a six-month
12 preexisting condition exclusion, unless the individual meets the
13 criteria specified in paragraph (1), (2), or (3).

14 (5) The individual is an employee or dependent who meets the
15 criteria described in paragraph (1) and was under a COBRA
16 continuation provision, and the coverage under that provision has
17 been exhausted. For purposes of this section, the definition of
18 "COBRA" set forth in subdivision (e) of Section 1373.621 shall
19 apply.

20 (6) The individual is a dependent of an enrolled eligible
21 employee who has lost or will lose his or her coverage under the
22 Healthy Families Program, the AIM Program, or the Medi-Cal
23 program and requests enrollment within 60 days of termination of
24 that coverage.

25 (7) The individual is an eligible employee who previously
26 declined coverage under an employer health benefit plan and who
27 has subsequently acquired a dependent who would be eligible for
28 coverage as a dependent of the employee through marriage, birth,
29 adoption, or placement for adoption, and who enrolls for coverage
30 under that employer health benefit plan on his or her behalf, and
31 on behalf of his or her dependent within 30 days following the
32 date of marriage, birth, adoption, or placement for adoption, in
33 which case the effective date of coverage shall be the first day of
34 the month following the date the completed request for enrollment
35 is received in the case of marriage, or the date of birth, or the date
36 of adoption or placement for adoption, whichever applies. Notice
37 of the special enrollment rights contained in this paragraph shall
38 be provided by the employer to an employee at or before the time
39 the employee is offered an opportunity to enroll in plan coverage.

(8) The individual is an eligible employee who has declined coverage for himself or herself or his or her dependents during a previous enrollment period because his or her dependents were covered by another employer health benefit plan at the time of the previous enrollment period. That individual may enroll himself or herself or his or her dependents for plan coverage during a special open enrollment opportunity if his or her dependents have lost or will lose coverage under that other employer health benefit plan. The special open enrollment opportunity shall be requested by the employee not more than 30 days after the date that the other health coverage is exhausted or terminated. Upon enrollment, coverage shall be effective not later than the first day of the first calendar month beginning after the date the request for enrollment is received. Notice of the special enrollment rights contained in this paragraph shall be provided by the employer to an employee at or before the time the employee is offered an opportunity to enroll in plan coverage.

(c) “Preexisting condition provision” means a contract provision that excludes coverage for charges or expenses incurred during a specified period following the enrollee’s effective date of coverage, as to a condition for which medical advice, diagnosis, care, or treatment was recommended or received during a specified period immediately preceding the effective date of coverage.

(d) “Creditable coverage” means:

(1) Any individual or group policy, contract, or program that is written or administered by a disability insurance company, nonprofit hospital service plan, health care service plan, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage but does not include accident only, credit, coverage for onsite medical clinics, disability income, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers’ compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

1 (2) The Medicare Program pursuant to Title XVIII of the federal
2 Social Security Act (42 U.S.C. Sec. 1395 et seq.).

3 (3) The Medicaid Program pursuant to Title XIX of the federal
4 Social Security Act (42 U.S.C. Sec. 1396 et seq.).

5 (4) Any other publicly sponsored program, provided in this state
6 or elsewhere, of medical, hospital, and surgical care.

7 (5) 10 U.S.C. Chapter 55 (commencing with Section 1071)
8 (Civilian Health and Medical Program of the Uniformed Services
9 (CHAMPUS)).

10 (6) A medical care program of the Indian Health Service or of
11 a tribal organization.

12 (7) A state health benefits risk pool.

13 (8) A health plan offered under 5 U.S.C. Chapter 89
14 (commencing with Section 8901) (Federal Employees Health
15 Benefits Program (FEHBP)).

16 (9) A public health plan as defined in federal regulations
17 authorized by Section 2701(c)(1)(I) of the Public Health Service
18 Act, as amended by Public Law 104-191, the Health Insurance
19 Portability and Accountability Act of 1996.

20 (10) A health benefit plan under Section 5(e) of the Peace Corps
21 Act (22 U.S.C. Sec. 2504(e)).

22 (11) Any other creditable coverage as defined by subdivision
23 (c) of Section 2701 of Title XXVII of the federal Public Health
24 Service Act (42 U.S.C. Sec. 300gg(c)).

25 (e) “Waivered condition” means a contract provision that
26 excludes coverage for charges or expenses incurred during a
27 specified period of time for one or more specific, identified,
28 medical conditions.

29 (f) “Affiliation period” means a period that, under the terms of
30 the health benefit plan, must expire before health care services
31 under the plan become effective.

32 SEC. 116. Section 1358.4 of the Health and Safety Code is
33 amended to read:

34 1358.4. The following definitions apply for the purposes of
35 this article:

36 (a) “Applicant” means:

37 (1) An individual enrollee who seeks to contract for health
38 coverage, in the case of an individual Medicare supplement
39 contract.

(2) An enrollee who seeks to obtain health coverage through a group, in the case of a group Medicare supplement contract.

(b) “Bankruptcy” means that situation in which a Medicare Advantage organization that is not an issuer has filed, or has had filed against it, a petition for declaration of bankruptcy and has ceased doing business in the state.

(c) “Continuous period of creditable coverage” means the period during which an individual was covered by creditable coverage, if during the period of the coverage the individual had no breaks in coverage greater than 63 days.

(d) (1) “Creditable coverage” means, with respect to an individual, coverage of the individual provided under any of the following:

(A) Any individual or group contract, policy, certificate, or program that is written or administered by a health care service plan, health insurer, fraternal benefits society, self-insured employer plan, or any other entity, in this state or elsewhere, and that arranges or provides medical, hospital, and surgical coverage not designed to supplement other private or governmental plans. The term includes continuation or conversion coverage.

(B) Part A or B of Title XVIII of the federal Social Security Act (42 U.S.C. Sec. 1395c et seq.) (Medicare).

(C) Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.) (Medicaid), other than coverage consisting solely of benefits under Section 1928 of that act.

(D) Chapter 55 of Title 10 of the United States Code (CHAMPUS).

(E) A medical care program of the Indian Health Service or of a tribal organization.

(F) A state health benefits risk pool.

(G) A health plan offered under Chapter 89 of Title 5 of the United States Code (Federal Employees Health Benefits Program).

(H) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the federal Public Health Service Act, as amended by Public Law 104-191, the federal Health Insurance Portability and Accountability Act of 1996.

(I) A health benefit plan under Section 5(e) of the federal Peace Corps Act (22 U.S.C. Sec. ~~2504(e)~~ 2504(e)).

(J) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

1 (K) Any other creditable coverage as defined by subsection (c)
2 of Section 2701 of Title XXVII of the federal Public Health Service
3 Act (42 U.S.C. Sec. 300gg(c)).

4 (2) “Creditable coverage” shall not include one or more, or any
5 combination of, the following:

6 (A) Coverage for accident-only or disability income insurance,
7 or any combination thereof.

8 (B) Coverage issued as a supplement to liability insurance.

9 (C) Liability insurance, including general liability insurance
10 and automobile liability insurance.

11 (D) Workers’ compensation or similar insurance.

12 (E) Automobile medical payment insurance.

13 (F) Credit-only insurance.

14 (G) Coverage for onsite medical clinics.

15 (H) Other similar insurance coverage, specified in federal
16 regulations, under which benefits for medical care are secondary
17 or incidental to other insurance benefits.

18 (3) “Creditable coverage” shall not include the following
19 benefits if they are provided under a separate policy, certificate,
20 or contract or are otherwise not an integral part of the plan:

21 (A) Limited scope dental or vision benefits.

22 (B) Benefits for long-term care, nursing home care, home health
23 care, community-based care, or any combination thereof.

24 (C) Other similar, limited benefits as are specified in federal
25 regulations.

26 (4) “Creditable coverage” shall not include the following
27 benefits if offered as independent, noncoordinated benefits:

28 (A) Coverage only for a specified disease or illness.

29 (B) Hospital indemnity or other fixed indemnity insurance.

30 (5) “Creditable coverage” shall not include the following if
31 offered as a separate policy, certificate, or contract:

32 (A) Medicare supplemental health insurance as defined under
33 Section 1882(g)(1) of the federal Social Security Act.

34 (B) Coverage supplemental to the coverage provided under
35 Chapter 55 of Title 10 of the United States Code.

36 (C) Similar supplemental coverage provided to coverage under
37 a group health plan.

38 (e) “Employee welfare benefit plan” means a plan, fund, or
39 program of employee benefits as defined in Section 1002 of Title

1 29 of the United States Code (Employee Retirement Income
2 Security Act).

3 (f) “Insolvency” means when an issuer, licensed to transact the
4 business of a health care service plan in this state, has had a final
5 order of liquidation entered against it with a finding of insolvency
6 by a court of competent jurisdiction in the issuer’s state of domicile.

7 (g) “Issuer” means a health care service plan delivering, or
8 issuing for delivery, Medicare supplement contracts in this state,
9 but does not include entities subject to Article 6 (commencing with
10 Section 10192.1) of Chapter 1 of Part 2 of Division 2 of the
11 Insurance Code.

12 (h) “Medicare” means the federal Health Insurance for the Aged
13 Act, Title XVIII of the Social Security Amendments of 1965, as
14 amended.

15 (i) “Medicare Advantage Plan” means a plan of coverage for
16 health benefits under Medicare Part C and includes:

17 (1) Coordinated care plans that provide health care services,
18 including, but not limited to, health care service plans (with or
19 without a point-of-service option), plans offered by
20 provider-sponsored organizations, and preferred provider
21 organizations plans.

22 (2) Medical savings account plans coupled with a contribution
23 into a Medicare Advantage medical savings account.

24 (3) Medicare Advantage private fee-for-service plans.

25 (j) “Medicare supplement contract” means a group or individual
26 plan contract of hospital and medical service associations or health
27 care service plans, other than a contract issued pursuant to a
28 contract under Section 1876 of the federal Social Security Act (42
29 U.S.C. Sec. 1395mm) or an issued contract under a demonstration
30 project specified in Section 1395ss(g)(1) of Title 42 of the United
31 States Code, that is advertised, marketed, or designed primarily
32 as a supplement to reimbursements under Medicare for the hospital,
33 medical, or surgical expenses of persons eligible for Medicare.
34 “Contract” means “Medicare supplement contract,” unless the
35 context requires otherwise. “Medicare supplement contract” does
36 not include a Medicare Advantage plan established under Medicare
37 Part C, an outpatient prescription drug plan established under
38 Medicare Part D, or a health care prepayment plan that provides
39 benefits pursuant to an agreement under subparagraph (A) of

1 paragraph (1) of subsection (a) of Section 1833 of the federal Social
2 Security Act.

3 (k) “1990 standardized Medicare supplement benefit plan,”
4 “1990 standardized benefit plan,” or “1990 plan” means a group
5 or individual Medicare supplement contract issued on or after July
6 21, 1992, and with an effective date prior to June 1, 2010, and
7 includes Medicare supplement contracts renewed on or after that
8 date that are not replaced by the issuer at the request of the enrollee
9 or subscriber.

10 (l) “2010 standardized Medicare supplement benefit plan,”
11 “2010 standardized benefit plan,” or “2010 plan” means a group
12 or individual Medicare supplement contract issued with an effective
13 date on or after June 1, 2010.

14 (m) “Secretary” means the Secretary of the United States
15 Department of Health and Human Services.

16 SEC. 117. Section 1358.12 of the Health and Safety Code is
17 amended to read:

18 1358.12. (a) (1) With respect to the guaranteed issue of a
19 Medicare supplement contract, eligible persons are those
20 individuals described in subdivision (b) who seek to enroll under
21 the contract during the period specified in subdivision (c), and who
22 submit evidence of the date of termination or disenrollment or
23 enrollment in Medicare Part D with the application for a Medicare
24 supplement contract.

25 (2) With respect to eligible persons, an issuer shall not take any
26 of the following actions:

27 (A) Deny or condition the issuance or effectiveness of a
28 Medicare supplement contract described in subdivision (e) that is
29 offered and is available for issuance to new enrollees by the issuer.

30 (B) Discriminate in the pricing of that Medicare supplement
31 contract because of health status, claims experience, receipt of
32 health care, or medical condition.

33 (C) Impose an exclusion of benefits based on a preexisting
34 condition under that Medicare supplement contract.

35 (b) An eligible person is an individual described in any of the
36 following paragraphs:

37 (1) The individual is enrolled under an employee welfare benefit
38 plan that provides health benefits that supplement the benefits
39 under Medicare and either of the following applies:

1 (A) The plan either terminates or ceases to provide all of those
2 supplemental health benefits to the individual.

3 (B) The employer no longer provides the individual with
4 insurance that covers all of the payment for the 20-percent
5 coinsurance.

6 (2) The individual is enrolled with a Medicare Advantage
7 organization under a Medicare Advantage plan under Medicare
8 Part C, and any of the following circumstances apply:

9 (A) The certification of the organization or plan has been
10 terminated.

11 (B) The organization has terminated or otherwise discontinued
12 providing the plan in the area in which the individual resides.

13 (C) The individual is no longer eligible to elect the plan because
14 of a change in the individual's place of residence or other change
15 in circumstances specified by the secretary. Those changes in
16 circumstances shall not include termination of the individual's
17 enrollment on the basis described in Section 1851(g)(3)(B) of the
18 federal Social Security Act where the individual has not paid
19 premiums on a timely basis or has engaged in disruptive behavior
20 as specified in standards under Section 1856 of the federal Social
21 Security Act, or the plan is terminated for all individuals within a
22 residence area.

23 (D) The Medicare Advantage plan in which the individual is
24 enrolled reduces any of its benefits or increases the amount of cost
25 sharing or discontinues for other than good cause relating to quality
26 of care, its relationship or contract under the plan with a provider
27 who is currently furnishing services to the individual. An individual
28 shall be eligible under this subparagraph for a Medicare supplement
29 contract issued by the same issuer through which the individual
30 was enrolled at the time the reduction, increase, or discontinuance
31 described above occurs or, commencing January 1, 2007, for one
32 issued by a subsidiary of the parent company of that issuer or by
33 a network that contracts with the parent company of that issuer.

34 (E) The individual demonstrates, in accordance with guidelines
35 established by the secretary, either of the following:

36 (i) The organization offering the plan substantially violated a
37 material provision of the organization's contract under this article
38 in relation to the individual, including the failure to provide on a
39 timely basis medically necessary care for which benefits are

1 available under the plan or the failure to provide the covered care
2 in accordance with applicable quality standards.

3 (ii) The organization, or agent or other entity acting on the
4 organization's behalf, materially misrepresented the plan's
5 provisions in marketing the plan to the individual.

6 (F) The individual meets other exceptional conditions as the
7 secretary may provide.

8 (3) The individual is 65 years of age or older, is enrolled with
9 a Program of All-Inclusive Care for the Elderly (PACE) provider
10 under Section 1894 of the federal Social Security Act, and
11 circumstances similar to those described in paragraph (2) exist that
12 would permit discontinuance of the individual's enrollment with
13 the provider, if the individual were enrolled in a Medicare
14 Advantage plan.

15 (4) The individual meets both of the following conditions:

16 (A) The individual is enrolled with any of the following:

17 (i) An eligible organization under a contract under Section 1876
18 of the federal Social Security Act (Medicare cost).

19 (ii) A similar organization operating under demonstration project
20 authority, effective for periods before April 1, 1999.

21 (iii) An organization under an agreement under Section
22 1833(a)(1)(A) of the federal Social Security Act (health care
23 prepayment plan).

24 (iv) An organization under a Medicare Select policy.

25 (B) The enrollment ceases under the same circumstances that
26 would permit discontinuance of an individual's election of coverage
27 under paragraph (2) or (3).

28 (5) The individual is enrolled under a Medicare supplement
29 contract, and the enrollment ceases because of any of the following
30 circumstances:

31 (A) The insolvency of the issuer or bankruptcy of the nonissuer
32 organization, or other involuntary termination of coverage or
33 enrollment under the contract.

34 (B) The issuer of the contract substantially violated a material
35 provision of the contract.

36 (C) The issuer, or an agent or other entity acting on the issuer's
37 behalf, materially misrepresented the contract's provisions in
38 marketing the contract to the individual.

39 (6) The individual meets both of the following conditions:

1 (A) The individual was enrolled under a Medicare supplement
2 contract and terminates enrollment and subsequently enrolls, for
3 the first time, with any Medicare Advantage organization under a
4 Medicare Advantage plan under Medicare Part C, any eligible
5 organization under a contract under Section 1876 of the federal
6 Social Security Act (Medicare cost), any similar organization
7 operating under demonstration project authority, any PACE
8 provider under Section 1894 of the federal Social Security Act, or
9 a Medicare Select policy.

10 (B) The subsequent enrollment under subparagraph (A) is
11 terminated by the individual during any period within the first 12
12 months of the subsequent enrollment (during which the enrollee
13 is permitted to terminate the subsequent enrollment under Section
14 1851(e) of the federal Social Security Act).

15 (7) The individual upon first becoming eligible for benefits
16 under Medicare Part A at 65 years of age, enrolls in a Medicare
17 Advantage plan under Medicare Part C or with a PACE provider
18 under Section 1894 of the federal Social Security Act, and
19 disenrolls from the plan or program not later than 12 months after
20 the effective date of enrollment.

21 (8) The individual while enrolled under a Medicare supplement
22 contract that covers outpatient prescription drugs enrolls in a
23 Medicare Part D plan during the initial enrollment period,
24 terminates enrollment in the Medicare supplement contract, and
25 submits evidence of enrollment in Medicare Part D along with the
26 application for a contract described in paragraph (4) of subdivision
27 (e).

28 (c) (1) In the case of an individual described in paragraph (1)
29 of subdivision (b), the guaranteed issue period begins on the later
30 of the following two dates and ends on the date that is 63 days
31 after the date the applicable coverage terminated:

32 (A) The date the individual receives a notice of termination or
33 cessation of all supplemental health benefits or, if no notice is
34 received, the date of the notice denying a claim because of a
35 termination or cessation of benefits.

36 (B) The date that the applicable coverage terminates or ceases.

37 (2) In the case of an individual described in paragraphs (2), (3),
38 (4), (6), and (7) of subdivision (b) whose enrollment is terminated
39 involuntarily, the guaranteed issue period begins on the date that

1 the individual receives a notice of termination and ends 63 days
2 after the date the applicable coverage is terminated.

3 (3) In the case of an individual described in subparagraph (A)
4 of paragraph (5) of subdivision (b), the guaranteed issue period
5 begins on the earlier of the following two dates and ends on the
6 date that is 63 days after the date the coverage is terminated:

7 (A) The date that the individual receives a notice of termination,
8 a notice of the issuer's bankruptcy or insolvency, or other similar
9 notice if any.

10 (B) The date that the applicable coverage is terminated.

11 (4) In the case of an individual described in paragraph (2), (3),
12 (6), or (7) of, or in subparagraph (B) or (C) of paragraph (5) of,
13 subdivision (b) who disenrolls voluntarily, the guaranteed issue
14 period begins on the date that is 60 days before the effective date
15 of the disenrollment and ends on the date that is 63 days after the
16 effective date of the disenrollment.

17 (5) In the case of an individual described in paragraph (8) of
18 subdivision (b), the guaranteed issue period begins on the date the
19 individual receives notice pursuant to Section 1882(v)(2)(B) of
20 the federal Social Security Act from the Medicare supplement
21 issuer during the 60-day period immediately preceding the initial
22 enrollment period for Medicare Part D and ends on the date that
23 is 63 days after the effective date of the individual's coverage
24 under Medicare Part D.

25 (6) In the case of an individual described in subdivision (b) who
26 is not included in this subdivision, the guaranteed issue period
27 begins on the effective date of disenrollment and ends on the date
28 that is 63 days after the effective date of disenrollment.

29 (d) (1) In the case of an individual described in paragraph (6)
30 of subdivision (b), or deemed to be so described pursuant to this
31 paragraph, whose enrollment with an organization or provider
32 described in subparagraph (A) of paragraph (6) of subdivision (b)
33 is involuntarily terminated within the first 12 months of enrollment
34 and who, without an intervening enrollment, enrolls with another
35 such organization or provider, the subsequent enrollment shall be
36 deemed to be an initial enrollment described in paragraph (6) of
37 subdivision (b).

38 (2) In the case of an individual described in paragraph (7) of
39 subdivision (b), or deemed to be so described pursuant to this
40 paragraph, whose enrollment with a plan or in a program described

1 in paragraph (7) of subdivision (b) is involuntarily terminated
2 within the first 12 months of enrollment and who, without an
3 intervening enrollment, enrolls in another such plan or program,
4 the subsequent enrollment shall be deemed to be an initial
5 enrollment described in paragraph (7) of subdivision (b).

6 (3) For purposes of paragraphs (6) and (7) of subdivision (b),
7 an enrollment of an individual with an organization or provider
8 described in subparagraph (A) of paragraph (6) of subdivision (b),
9 or with a plan or in a program described in paragraph (7) of
10 subdivision (b), shall not be deemed to be an initial enrollment
11 under this paragraph after the two-year period beginning on the
12 date on which the individual first enrolled with such an
13 organization, provider, plan, or program.

14 (e) (1) Under paragraphs (1), (2), (3), (4), and (5) of subdivision
15 (b), an eligible individual is entitled to a Medicare supplement
16 contract that has a benefit package classified as Plan A, B, C, F
17 (including a high deductible Plan F), K, or L offered by any issuer.

18 (2) (A) Under paragraph (6) of subdivision (b), an eligible
19 individual is entitled to the same Medicare supplement contract
20 in which he or she was most recently enrolled, if available from
21 the same issuer. If that contract is not available, the eligible
22 individual is entitled to a Medicare supplement contract that has
23 a benefit package classified as Plan A, B, C, F (including a high
24 deductible Plan F), K, or L offered by any issuer.

25 (B) On and after January 1, 2006, an eligible individual
26 described in this paragraph who was most recently enrolled in a
27 Medicare supplement contract with an outpatient prescription drug
28 benefit, is entitled to a Medicare supplement contract that is
29 available from the same issuer but without an outpatient
30 prescription drug benefit or, at the election of the individual, has
31 a benefit package classified as a Plan A, B, C, F (including high
32 deductible Plan F), K, or L that is offered by any issuer.

33 (3) Under paragraph (7) of subdivision (b), an eligible individual
34 is entitled to any Medicare supplement contract offered by any
35 issuer.

36 (4) Under paragraph (8) of subdivision (b), an eligible individual
37 is entitled to a Medicare supplement contract that has a benefit
38 package classified as Plan A, B, C, F (including a high deductible
39 Plan F), K, or L and that is offered and is available for issuance to
40 a new enrollee by the same issuer that issued the individual's

1 Medicare supplement contract with outpatient prescription drug
2 coverage.

3 (f) (1) At the time of an event described in subdivision (b) by
4 which an individual loses coverage or benefits due to the
5 termination of a contract or agreement, policy, or plan, the
6 organization that terminates the contract or agreement, the issuer
7 terminating the policy or contract, or the administrator of the plan
8 being terminated, respectively, shall notify the individual of his
9 or her rights under this section and of the obligations of issuers of
10 Medicare supplement contracts under subdivision (a). The notice
11 shall be communicated contemporaneously with the notification
12 of termination.

13 (2) At the time of an event described in subdivision (b) by which
14 an individual ceases enrollment under a contract or agreement,
15 policy, or plan, the organization that offers the contract or
16 agreement, regardless of the basis for the cessation of enrollment,
17 the issuer offering the policy or contract, or the administrator of
18 the plan, respectively, shall notify the individual of his or her rights
19 under this section, and of the obligations of issuers of Medicare
20 supplement contracts under subdivision (a). The notice shall be
21 communicated within 10 working days of the date the issuer
22 received notification of disenrollment.

23 (g) An issuer shall refund any unearned premium that an enrollee
24 or subscriber paid in advance and shall terminate coverage upon
25 the request of an enrollee or subscriber.

26 SEC. 118. Section 1358.91 of the Health and Safety Code is
27 amended to read:

28 1358.91. The following standards are applicable to all Medicare
29 supplement contracts delivered or issued for delivery in this state
30 with an effective date on or after June 1, 2010. No contract may
31 be advertised, solicited, delivered, or issued for delivery in this
32 state as a Medicare supplement contract unless it complies with
33 these benefit plan standards. Benefit plan standards applicable to
34 Medicare supplement contracts issued with an effective date before
35 June 1, 2010, remain subject to the requirements of Section 1358.9.

36 (a) (1) An issuer shall make available to each prospective
37 enrollee and subscriber a contract containing only the basic (core)
38 benefits, as defined in subdivision (b) of Section 1358.81.

39 (2) If an issuer makes available any of the additional benefits
40 described in subdivision (c) of Section 1358.81, or offers

1 standardized benefit plan K or L, as described in paragraphs (8)
2 and (9) of subdivision (e), then the issuer shall make available to
3 each prospective enrollee and subscriber, in addition to a contract
4 with only the basic (core) benefits as described in paragraph (1),
5 a contract containing either standardized benefit plan C, as
6 described in paragraph (3) of subdivision (e), or standardized
7 benefit plan F, as described in paragraph (5) of subdivision (e).

8 (b) No groups, packages or combinations of Medicare
9 supplement benefits other than those listed in this section shall be
10 offered for sale in this state, except as may be permitted in
11 subdivision (f) and by Section 1358.10.

12 (c) Benefit plans shall be uniform in structure, language,
13 designation, and format to the standard benefit plans listed in
14 subdivision (e) and conform to the definitions in Section 1358.4.
15 Each benefit shall be structured in accordance with the format
16 provided in subdivisions (b) and (c) of Section 1358.81; or, in the
17 case of plan K or L, in paragraph (8) or (9) of subdivision (e) of
18 Section 1358.91 and list the benefits in the order shown in
19 subdivision (e). For purposes of this section, “structure, language,
20 and format” means style, arrangement, and overall content of a
21 benefit.

22 (d) In addition to the benefit plan designations required in
23 subdivision (c), an issuer may use other designations to the extent
24 permitted by law.

25 (e) With respect to the makeup of 2010 standardized benefit
26 plans, the following shall apply:

27 (1) Standardized Medicare supplement benefit plan A shall
28 include only the following: the basic (core) benefits as defined in
29 subdivision (b) of Section 1358.81.

30 (2) Standardized Medicare supplement benefit plan B shall
31 include only the following: the basic (core) benefit as defined in
32 subdivision (b) of Section 1358.81, plus 100 percent of the
33 Medicare Part A deductible as defined in paragraph (1) of
34 subdivision (c) of Section 1358.81.

35 (3) Standardized Medicare supplement benefit plan C shall
36 include only the following: the basic (core) benefit as defined in
37 subdivision (b) of Section 1358.81, plus 100 percent of the
38 Medicare Part A deductible, skilled nursing facility care, 100
39 percent of the Medicare Part B deductible, and medically necessary

1 emergency care in a foreign country, as defined in paragraphs (1),
2 (3), (4), and (6) of subdivision (c) of Section 1358.81, respectively.

3 (4) Standardized Medicare supplement benefit plan D shall
4 include only the following: the basic (core) benefit, as defined in
5 subdivision (b) of Section 1358.81, plus 100 percent of the
6 Medicare Part A deductible, skilled nursing facility care, and
7 medically necessary emergency care in a foreign country, as
8 defined in paragraphs (1), (3), and (6) of subdivision (c) of Section
9 1358.81, respectively.

10 (5) Standardized Medicare supplement benefit plan F shall
11 include only the following: the basic (core) benefit as defined in
12 subdivision (b) of Section 1358.81, plus 100 percent of the
13 Medicare Part A deductible, skilled nursing facility care, 100
14 percent of the Medicare Part B deductible, 100 percent of the
15 Medicare Part B excess charges, and medically necessary
16 emergency care in a foreign country, as defined in paragraphs (1),
17 (3), (4), (5), and (6) of subdivision (c) of Section 1358.81,
18 respectively.

19 (6) Standardized Medicare supplement benefit high deductible
20 plan F shall include only the following: 100 percent of covered
21 expenses following the payment of the annual deductible set forth
22 in subparagraph (B).

23 (A) The basic (core) benefit as defined in subdivision (b) of
24 Section 1358.81, plus 100 percent of the Medicare Part A
25 deductible, skilled nursing facility care, 100 percent of the
26 Medicare Part B deductible, 100 percent of the Medicare Part B
27 excess charges, and medically necessary emergency care in a
28 foreign country, as defined in paragraphs (1), (3), (4), (5), and (6)
29 of subdivision (c) of Section 1358.81, respectively.

30 (B) The annual deductible in high deductible plan F shall consist
31 of out-of-pocket expenses, other than premiums, for services
32 covered by plan F, and shall be in addition to any other specific
33 benefit deductibles. The basis for the deductible shall be one
34 thousand five hundred dollars (\$1,500) and shall be adjusted
35 annually from 1999 by the Secretary of the United States
36 Department of Health and Human Services to reflect the change
37 in the Consumer Price Index for all urban consumers for the
38 12-month period ending with August of the preceding year, and
39 rounded to the nearest multiple of ten dollars (\$10).

(7) Standardized Medicare supplement benefit plan G shall include only the following: the basic (core) benefit as defined in subdivision (b) of Section 1358.81, plus 100 percent of the Medicare Part A deductible, skilled nursing facility care, 100 percent of the Medicare Part B excess charges, and medically necessary emergency care in a foreign country, as defined in paragraphs (1), (3), (5), and (6) of subdivision (c) of Section 1358.81, respectively.

(8) Standardized Medicare supplement benefit plan K shall include only the following:

(A) Coverage of 100 percent of the Part A hospital coinsurance amount for each day used from the 61st through the 90th day in any Medicare benefit period.

(B) Coverage of 100 percent of the Part A hospital coinsurance amount for each Medicare lifetime inpatient reserve day used from the 91st through the 150th day in any Medicare benefit period.

(C) Upon exhaustion of the Medicare hospital inpatient coverage, including the lifetime reserve days, coverage of 100 percent of the Medicare Part A eligible expenses for hospitalization paid at the applicable prospective payment system (PPS) rate, or other appropriate Medicare standard of payment, subject to a lifetime maximum benefit of an additional 365 days. The provider shall accept the issuer's payment as payment in full and may not bill the insured for any balance.

(D) Coverage for 50 percent of the Medicare Part A inpatient hospital deductible amount per benefit period until the out-of-pocket limitation is met as described in subparagraph (J).

(E) Coverage for 50 percent of the coinsurance amount for each day used from the 21st day through the 100th day in a Medicare benefit period for posthospital skilled nursing facility care eligible under Medicare Part A until the out-of-pocket limitation is met as described in subparagraph (J).

(F) Coverage for 50 percent of cost sharing for all Part A Medicare eligible expenses and respite care until the out-of-pocket limitation is met as described in subparagraph (J).

(G) Coverage for 50 percent, under Medicare Part A or B, of the reasonable cost of the first three pints of blood, or equivalent quantities of packed red blood cells, as defined under federal regulations, unless replaced in accordance with federal regulations

1 until the out-of-pocket limitation is met as described in
2 subparagraph (J).

3 (H) Except for coverage provided in subparagraph (I), coverage
4 for 50 percent of the cost sharing otherwise applicable under
5 Medicare Part B after the enrollee or subscriber pays the Part B
6 deductible until the out-of-pocket limitation is met as described
7 in subparagraph (J).

8 (I) Coverage of 100 percent of the cost sharing for Medicare
9 Part B preventive services after the enrollee or subscriber pays the
10 Part B deductible.

11 (J) Coverage of 100 percent of all cost sharing under Medicare
12 Parts A and B for the balance of the calendar year after the
13 individual has reached the out-of-pocket limitation on annual
14 expenditures under Medicare Parts A and B of four thousand
15 dollars (\$4,000) in 2006, indexed each year by the appropriate
16 inflation adjustment specified by the Secretary of the United States
17 Department of Health and Human Services.

18 (9) Standardized Medicare supplement benefit plan L shall
19 include only the following:

20 (A) The benefits described in subparagraphs (A), (B), (C), and
21 (I) of paragraph (8).

22 (B) The benefits described in subparagraphs (D), (E), (F), (G),
23 and (H) of paragraph (8), but substituting 75 percent for 50 percent.

24 (C) The benefit described in subparagraph (J) of paragraph (8),
25 but substituting two thousand dollars (\$2,000) for four thousand
26 dollars (\$4,000).

27 (10) Standardized Medicare supplement benefit plan M shall
28 include only the following: the basic (core) benefit as defined in
29 subdivision (b) of Section 1358.81, plus 50 percent of the Medicare
30 Part A deductible, skilled nursing facility care, and medically
31 necessary emergency care in a foreign country, as defined in
32 paragraphs (2), (3), and (6) of subdivision (c) of Section 1358.81,
33 respectively.

34 (11) Standardized Medicare supplement benefit plan N shall
35 include only the following: the basic (core) benefit as defined in
36 subdivision (b) of Section 1358.81, plus 100 percent of the
37 Medicare Part A deductible, skilled nursing facility care, and
38 medically necessary emergency care in a foreign country, as
39 defined in paragraphs (1), (3), and (6) of subdivision (c) of Section
40 1358.81, respectively, with copayments in the following amounts:

1 (A) The lesser of twenty dollars (\$20) or the Medicare Part B
2 coinsurance or copayment for each covered health care provider
3 office visit, including visits to medical specialists.

4 (B) The lesser of fifty dollars (\$50) or the Medicare Part B
5 coinsurance or copayment for each covered emergency room visit;
6 however, this copayment shall be waived if the enrollee or
7 subscriber is admitted to any hospital and the emergency visit is
8 subsequently covered as a Medicare Part A expense.

9 (f) An issuer may, with the prior approval of the director, offer
10 contracts with new or innovative benefits, in addition to the
11 standardized benefits provided in a contract that otherwise complies
12 with the applicable standards. The new or innovative benefits shall
13 include only benefits that are appropriate to Medicare supplement
14 contracts, are new or innovative, are not otherwise available, and
15 are cost effective. Approval of new or innovative benefits shall
16 not adversely impact the goal of Medicare supplement
17 simplification. New or innovative benefits shall not include an
18 outpatient prescription drug benefit. New or innovative benefits
19 shall not be used to change or reduce benefits, including a change
20 of any cost-sharing provision, in any standardized plan.

21 SEC. 119. Section 1367.66 of the Health and Safety Code is
22 amended to read:

23 1367.66. Every individual or group health care service plan
24 contract, except for a specialized health care service plan, that is
25 issued, amended, or renewed on or after January 1, 2002, and that
26 includes coverage for treatment or surgery of cervical cancer shall
27 also be deemed to provide coverage for an annual cervical cancer
28 screening test upon the referral of the patient's physician and
29 surgeon, a nurse practitioner, or a certified nurse midwife,
30 providing care to the patient and operating within the scope of
31 practice otherwise permitted for the licensee.

32 The coverage for an annual cervical cancer screening test
33 provided pursuant to this section shall include the conventional
34 Pap test, a human papillomavirus screening test that is approved
35 by the federal Food and Drug Administration, and the option of
36 any cervical cancer screening test approved by the federal Food
37 and Drug Administration, upon the referral of the patient's health
38 care provider.

39 Nothing in this section shall be construed to establish a new
40 mandated benefit or to prevent application of deductible or

1 copayment provisions in an existing plan contract. The Legislature
2 intends in this section to provide that cervical cancer screening
3 services are deemed to be covered if the plan contract includes
4 coverage for cervical cancer treatment or surgery.

5 SEC. 120. Section 1418.21 of the Health and Safety Code is
6 amended to read:

7 1418.21. (a) A skilled nursing facility that has been certified
8 for purposes of Medicare or Medicaid shall post the overall facility
9 rating information determined by the federal Centers for Medicare
10 and Medicaid Services (CMS) in accordance with the following
11 requirements:

12 (1) The information shall be posted in at least the following
13 locations in the facility:

14 (A) An area accessible and visible to members of the public.

15 (B) An area used for employee breaks.

16 (C) An area used by residents for communal functions, such as
17 dining, resident council meetings, or activities.

18 (2) The information shall be posted on white or light-colored
19 paper that includes all of the following, in the following order:

20 (A) The full name of the facility, in a clear and easily readable
21 font of at least 28 point.

22 (B) The full address of the facility in a clear and easily readable
23 font of at least 20 point.

24 (C) The most recent overall star rating given by CMS to that
25 facility, except that a facility shall have seven business days from
26 the date when it receives a different rating from CMS to include
27 the updated rating in the posting. The star rating shall be aligned
28 in the center of the page. The star rating shall be expressed as the
29 number that reflects the number of stars given to the facility by
30 CMS. The number shall be in a clear and easily readable font of
31 at least two inches print.

32 (D) Directly below the star symbols shall be the following text
33 in a clear and easily readable font of at least 28 point:

34 “The above number is out of 5 stars.”

35 (E) Directly below the text described in subparagraph (D) shall
36 be the following text in a clear and easily readable font of at least
37 14 point:

38 “This facility is reviewed annually and has been licensed by the
39 State of California and certified by the federal Centers for Medicare
40 and Medicaid Services (CMS). CMS rates facilities that are

1 certified to accept Medicare or Medicaid. CMS gave the above
2 rating to this facility. A detailed explanation of this rating is
3 maintained at this facility and will be made available upon request.
4 This information can also be accessed online at the Nursing Home
5 Compare Internet Web site at
6 <http://www.medicare.gov/NHcompare>. Like any information, the
7 Five-Star Quality Rating System has strengths and limits. The
8 criteria upon which the rating is determined may not represent all
9 of the aspects of care that may be important to you. You are
10 encouraged to discuss the rating with facility staff. The Five-Star
11 Quality Rating System was created to help consumers, their
12 families, and caregivers compare nursing homes more easily and
13 help identify areas about which you may want to ask questions.
14 Nursing home ratings are assigned based on ratings given to health
15 inspections, staffing, and quality measures. Some areas are assigned
16 a greater weight than other areas. These ratings are combined to
17 calculate the overall rating posted here.”

18 (F) Directly below the text described in subparagraph (E), the
19 following text shall appear in a clear and easily readable font of
20 at least 14 point:

21
22 “State licensing information on skilled nursing facilities is
23 available on the State Department of Public Health’s Internet Web
24 site at: www.cdph.ca.gov, under Programs, Licensing and
25 Certification, Health Facilities Consumer Information System.”

26
27 (3) For the purposes of this section, “a detailed explanation of
28 this rating” shall include, but shall not be limited to, a printout of
29 the information explaining the Five-Star Quality Rating System
30 that is available on the CMS Nursing Home Compare Internet Web
31 site. This information shall be maintained at the facility and shall
32 be made available upon request.

33 (4) The requirements of this section shall be in addition to any
34 other posting or inspection report availability requirements.

35 (b) Violation of this section shall constitute a class B violation,
36 as defined in subdivision (e) of Section 1424 and, notwithstanding
37 Section 1290, shall not constitute a crime. Fines from a violation
38 of this section shall be deposited into the State Health Facilities
39 Citation Penalties Account, created pursuant to Section 1417.2.

40 (c) This section shall be operative on January 1, 2011.

1 SEC. 121. Section 1429 of the Health and Safety Code is
2 amended to read:

3 1429. (a) Each class “AA” and class “A” citation specified in
4 subdivisions (c) and (d) of Section 1424 that is issued, or a copy
5 or copies thereof, shall be prominently posted for 120 days. The
6 citation or copy shall be posted in a place or places in plain view
7 of the patients or residents in the long-term health care facility,
8 persons visiting those patients or residents, and persons who inquire
9 about placement in the facility.

10 (1) The citation shall be posted in at least the following locations
11 in the facility:

12 (A) An area accessible and visible to members of the public.

13 (B) An area used for employee breaks.

14 (C) An area used by residents for communal functions, such as
15 dining, resident council meetings, or activities.

16 (2) The citation, along with a cover sheet, shall be posted on a
17 white or light-colored sheet of paper, at least 8½ by 11 inches in
18 size, that includes all of the following information:

19 (A) The full name of the facility, in a clear and easily readable
20 font in at least 28-point type.

21 (B) The full address of the facility, in a clear and easily readable
22 font in at least 20-point type.

23 (C) Whether the citation is class “AA” or class “A.”

24 (3) The facility may post the plan of correction.

25 (4) The facility may post a statement disputing the citation or
26 a statement showing the appeal status, or both.

27 (5) The facility may remove and discontinue the posting required
28 by this section if the citation is withdrawn or dismissed by the
29 department, or is dismissed as a result of a citation review
30 conference.

31 (b) Each class “B” citation specified in subdivision (e) of Section
32 1424 that is issued pursuant to this section and that has become
33 final, or a copy or copies thereof, shall be retained by the licensee
34 at the facility cited until the violation is corrected to the satisfaction
35 of the department. Each citation shall be made promptly available
36 by the licensee for inspection or examination by any member of
37 the public who so requests. In addition, every licensee shall post
38 in a place or places in plain view of the patient or resident in the
39 long-term health care facility, persons visiting those patients or
40 residents, and persons who inquire about placement in the facility,

1 a prominent notice informing those persons that copies of all final
2 uncorrected citations issued by the department to the facility will
3 be made promptly available by the licensee for inspection by any
4 person who so requests.

5 (c) A violation of this section shall constitute a class “B”
6 violation, and shall be subject to a civil penalty in the amount of
7 one thousand dollars (\$1,000), as provided in subdivision (e) of
8 Section 1424. Notwithstanding Section 1290, a violation of this
9 section shall not constitute a crime. Fines imposed pursuant to this
10 section shall be deposited into the State Health Facilities Citation
11 Penalties Account, created pursuant to Section 1417.2.

12 SEC. 122. Section 1499 of the Health and Safety Code is
13 amended to read:

14 1499. (a) Any person or entity licensed or certificated under
15 Chapter 1 (commencing with Section 1200), Chapter 2
16 (commencing with Section 1250), Chapter 2.3 (commencing with
17 Section 1400), Chapter 2.35 (commencing with Section 1416),
18 Chapter 3.3 (commencing with Section 1570), Chapter 8
19 (commencing with Section 1725), Chapter 8.3 (commencing with
20 Section 1743), Chapter 8.5 (commencing with Section 1745), or
21 Chapter 8.6 (commencing with Section 1760) of this code, or under
22 Section 1247.6 of the Business and Professions Code, shall, in
23 addition to all other requirements, disclose as part of the application
24 for the license or certificate any revocation or other final
25 administrative action taken against a license, certificate,
26 registration, or other approval to engage in a profession, vocation,
27 or occupation, or a license or other permission to operate a facility
28 or institution.

29 (b) The department may consider, in determining whether to
30 grant or deny the license or certification, any final revocation or
31 other final administrative action taken against a license, certificate,
32 registration, or other permission to engage in a profession, vocation,
33 or occupation or a license or other permission to operate a facility
34 or institution.

35 (c) An applicant and any other person specified in this
36 subdivision, as part of the background clearance process, shall
37 provide information as to whether or not the person has any prior
38 criminal convictions, has had any arrests within the past 12-month
39 period, or has any active arrests, and shall certify that, to the best
40 of his or her knowledge, the information provided is true. This

1 requirement is not intended to duplicate existing requirements for
2 individuals who are required to submit fingerprint images as part
3 of a criminal background clearance process. Every applicant shall
4 provide information on any prior administrative action taken
5 against him or her by any federal, state, or local government agency
6 and shall certify that, to the best of his or her knowledge, the
7 information provided is true. An applicant or other person required
8 to provide information pursuant to this section that knowingly or
9 willfully makes false statements, representations, or omissions
10 may be subject to administrative action, including, but not limited
11 to, denial of his or her application or exemption or revocation of
12 any exemption previously granted.

13 SEC. 123. Section 1568.03 of the Health and Safety Code is
14 amended to read:

15 1568.03. (a) No person, firm, partnership, association, or
16 corporation within the state and no state or local public agency
17 shall operate, establish, manage, conduct, or maintain a residential
18 care facility in this state without first obtaining and maintaining a
19 valid license therefor, as provided in this chapter.

20 (b) A facility may accept or retain residents requiring varying
21 levels of care. However, a facility shall not accept or retain
22 residents who require a higher level of care than the facility is
23 authorized to provide. Persons who require 24-hour skilled nursing
24 intervention shall not be appropriate for a residential care facility.

25 (c) This chapter shall not apply to the following:

26 (1) Any health facility, as defined in Section 1250.

27 (2) Any clinic, as defined in Section 1200.

28 (3) Any arrangement for the receiving and care of persons with
29 chronic, life-threatening illness by a relative, guardian or
30 conservator, significant other, or close friend; or any arrangement
31 for the receiving and care of persons with chronic, life-threatening
32 illness from only one family as respite for the relative, guardian
33 or conservator, significant other, or close friend, if the arrangement
34 is not for financial profit and occurs only occasionally and
35 irregularly, as defined by regulations of the department.

36 (4) (A) Any house, institution, hotel, foster home, shared
37 housing project, or other similar facility that is limited to providing
38 any of the following: housing, meals, transportation, housekeeping,
39 recreational and social activities, the enforcement of house rules,

1 counseling on activities of daily living, and service referrals, as
2 long as both of the following conditions are met:

3 (i) After any referral, all residents thereof independently obtain
4 care and supervision and medical services without the assistance
5 of the facility or of any person or entity with an organizational or
6 financial connection with that facility.

7 (ii) No resident thereof has an unmet need for care and
8 supervision or protective supervision. A memorandum of
9 understanding between the facility and any service agency to which
10 it refers residents does not necessarily itself constitute an agreement
11 for care and supervision of the resident.

12 (B) In determining the applicability of this paragraph, the
13 department shall determine the residents' need for care and
14 supervision, if any, and shall identify the persons or entities
15 providing or assisting in the provision of care and supervision.
16 This paragraph shall apply only if the department determines that
17 the care and supervision needs of all residents are being
18 independently met.

19 (5) (A) (i) Any housing occupied by elderly or disabled
20 persons, or both, that is approved and operated pursuant to Section
21 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), or Section 811
22 of Public Law 101-625 (42 U.S.C. Sec. 8013), or whose mortgage
23 is insured pursuant to Section 236 of Public Law 90-448 (12 U.S.C.
24 Sec. 1715z), or that receives mortgage assistance pursuant to
25 Section 221d (3) of Public Law 87-70 (12 U.S.C. Sec. 1751l),
26 where supportive services are made available to residents at their
27 option, as long as the project owner or operator does not contract
28 for or provide the supportive services.

29 (ii) Any housing that qualifies for a low-income housing credit
30 pursuant to Section 252 of Public Law 99-514 (26 U.S.C. Sec. 42)
31 or that is subject to the requirements for rental dwellings for
32 low-income families pursuant to Section 8 of Public Law 93-383
33 (42 U.S.C. Sec. 1437f), and that is occupied by elderly or disabled
34 persons, or both, where supportive services are made available to
35 residents at their option, as long as the project owner or operator
36 does not contract for or provide the supportive services.

37 (B) The project owner or operator to which subparagraph (A)
38 applies may coordinate, or help residents gain access to, the
39 supportive services, either directly or through a service coordinator.

40 (6) Any similar facility determined by the director.

1 (d) A holder of a residential care facility license may hold or
2 obtain an additional license or a child day care facility license, as
3 long as the services required by each license are provided at
4 separate locations or distinctly separate sections of the building.

5 (e) The director may bring an action to enjoin the violation or
6 threatened violation of this section in the superior court in and for
7 the county in which the violation occurred or is about to occur.
8 Any proceeding under this section shall conform to the
9 requirements of Chapter 3 (commencing with Section 525) of Title
10 7 of Part 2 of the Code of Civil Procedure, except that the director
11 shall not be required to allege facts necessary to show or tending
12 to show lack of adequate remedy at law or irreparable damage or
13 loss. The court shall, if it finds the allegations to be true, issue its
14 order enjoining continuance of the violation.

15 SEC. 124. Section 1569.69 of the Health and Safety Code is
16 amended to read:

17 1569.69. (a) Each residential care facility for the elderly
18 licensed under this chapter shall ensure that each employee of the
19 facility who assists residents with the self-administration of
20 medications meets the following training requirements:

21 (1) In facilities licensed to provide care for 16 or more persons,
22 the employee shall complete 16 hours of initial training. This
23 training shall consist of eight hours of hands-on shadowing training,
24 which shall be completed prior to assisting with the
25 self-administration of medications, and eight hours of other training
26 or instruction, as described in subdivision (f), which shall be
27 completed within the first two weeks of employment.

28 (2) In facilities licensed to provide care for 15 or fewer persons,
29 the employee shall complete six hours of initial training. This
30 training shall consist of two hours of hands-on shadowing training,
31 which shall be completed prior to assisting with the
32 self-administration of medications, and four hours of other training
33 or instruction, as described in subdivision (f), which shall be
34 completed within the first two weeks of employment.

35 (3) An employee shall be required to complete the training
36 requirements for hands-on shadowing training described in this
37 subdivision prior to assisting any resident in the self-administration
38 of medications. The training and instruction described in this
39 subdivision shall be completed, in their entirety, within the first
40 two weeks of employment.

1 (4) The training shall cover all of the following areas:

2 (A) The role, responsibilities, and limitations of staff who assist
3 residents with the self-administration of medication, including
4 tasks limited to licensed medical professionals.

5 (B) An explanation of the terminology specific to medication
6 assistance.

7 (C) An explanation of the different types of medication orders:
8 prescription, over-the-counter, controlled, and other medications.

9 (D) An explanation of the basic rules and precautions of
10 medication assistance.

11 (E) Information on medication forms and routes for medication
12 taken by residents.

13 (F) A description of procedures for providing assistance with
14 the self-administration of medications in and out of the facility,
15 and information on the medication documentation system used in
16 the facility.

17 (G) An explanation of guidelines for the proper storage, security,
18 and documentation of centrally stored medications.

19 (H) A description of the processes used for medication ordering,
20 refills, and the receipt of medications from the pharmacy.

21 (I) An explanation of medication side effects, adverse reactions,
22 and errors.

23 (5) To complete the training requirements set forth in this
24 subdivision, each employee shall pass an examination that tests
25 the employee's comprehension of, and competency in, the subjects
26 listed in paragraph (4).

27 (6) Residential care facilities for the elderly shall encourage
28 pharmacists and licensed medical professionals to use plain English
29 when preparing labels on medications supplied to residents. As
30 used in this section, "plain English" means that no abbreviations,
31 symbols, or Latin medical terms shall be used in the instructions
32 for the self-administration of medication.

33 (7) The training requirements of this section are not intended
34 to replace or supplant those required of all staff members who
35 assist residents with personal activities of daily living as set forth
36 in Section 1569.625.

37 (8) The training requirements of this section shall be repeated
38 if either of the following occurs:

39 (A) An employee returns to work for the same licensee after a
40 break of service of more than 180 consecutive calendar days.

1 (B) An employee goes to work for another licensee in a facility
2 in which he or she assists residents with the self-administration of
3 medication.

4 (b) Each employee who received training and passed the
5 examination required in paragraph (5) of subdivision (a), and who
6 continues to assist with the self-administration of medicines, shall
7 also complete four hours of in-service training on
8 medication-related issues in each succeeding 12-month period.

9 (c) The requirements set forth in subdivisions (a) and (b) do not
10 apply to persons who are licensed medical professionals.

11 (d) Each residential care facility for the elderly that provides
12 employee training under this section shall use the training material
13 and the accompanying examination that are developed by, or in
14 consultation with, a licensed nurse, pharmacist, or physician. The
15 licensed residential care facility for the elderly shall maintain the
16 following documentation for each medical consultant used to
17 develop the training:

18 (1) The name, address, and telephone number of the consultant.

19 (2) The date when consultation was provided.

20 (3) The consultant's organization affiliation, if any, and any
21 educational and professional qualifications specific to medication
22 management.

23 (4) The training topics for which consultation was provided.

24 (e) Each person who provides employee training under this
25 section shall meet the following education and experience
26 requirements:

27 (1) A minimum of five hours of initial, or certified continuing,
28 education or three semester units, or the equivalent, from an
29 accredited educational institution, on topics relevant to medication
30 management.

31 (2) The person shall meet any of the following practical
32 experience or licensure requirements:

33 (A) Two years of full-time experience, within the last four years,
34 as a consultant with expertise in medication management in areas
35 covered by the training described in subdivision (a).

36 (B) Two years of full-time experience, or the equivalent, within
37 the last four years, as an administrator for a residential care facility
38 for the elderly, during which time the individual has acted in
39 substantial compliance with applicable regulations.

1 (C) Two years of full-time experience, or the equivalent, within
2 the last four years, as a direct care provider assisting with the
3 self-administration of medications for a residential care facility
4 for the elderly, during which time the individual has acted in
5 substantial compliance with applicable regulations.

6 (D) Possession of a license as a medical professional.

7 (3) The licensed residential care facility for the elderly shall
8 maintain the following documentation on each person who provides
9 employee training under this section:

10 (A) The person's name, address, and telephone number.

11 (B) Information on the topics or subject matter covered in the
12 training.

13 (C) The time, dates, and hours of training provided.

14 (f) Other training or instruction, as required in paragraphs (1)
15 and (2) of subdivision (a), may be provided offsite, and may use
16 various methods of instruction, including, but not limited to, all
17 of the following:

18 (1) Lectures by presenters who are knowledgeable about
19 medication management.

20 (2) Video recorded instruction, interactive material, online
21 training, and books.

22 (3) Other written or visual materials approved by organizations
23 or individuals with expertise in medication management.

24 (g) Residential care facilities for the elderly licensed to provide
25 care for 16 or more persons shall maintain documentation that
26 demonstrates that a consultant pharmacist or nurse has reviewed
27 the facility's medication management program and procedures at
28 least twice a year.

29 (h) Nothing in this section authorizes unlicensed personnel to
30 directly administer medications.

31 SEC. 125. Section 1599.645 of the Health and Safety Code is
32 amended to read:

33 1599.645. (a) Within 30 days of approval of a change of
34 ownership by the State Department of Public Health, the skilled
35 nursing facility shall send written notification to all current
36 residents and patients and to the primary contacts listed in the
37 admission agreement of each resident and patient. The notice shall
38 disclose the name of the owner and licensee of the skilled nursing
39 facility and the name and contact information of a single entity

1 that is responsible for all aspects of patient care and the operation
2 of the facility.

3 (b) The department shall accept a copy of the written notice and
4 a copy of the list of individuals and mailing addresses to whom
5 the facility sent the notification as satisfactory evidence that the
6 facility provided the required written notification.

7 SEC. 126. Section 1736.5 of the Health and Safety Code is
8 amended to read:

9 1736.5. (a) The department shall deny a training application
10 and deny, suspend, or revoke a certificate issued under this article
11 if the applicant or certificate holder has been convicted of a
12 violation or attempted violation of any of the following Penal Code
13 provisions: Section 187, subdivision (a) of Section 192, Section
14 203, 205, 206, 207, 209, 210, 210.5, 211, 220, 222, 243.4, 245,
15 261, 262, or 264.1, Sections 265 to 267, inclusive, Section 273a,
16 273d, 273.5, or 285, subdivisions (c), (d), (f), and (g) of Section
17 286, Section 288, subdivisions (c), (d), (f), and (g) of Section 288a,
18 Section 288.5, 289, 289.5, 368, 451, 459, 470, 475, 484, or 484b,
19 Sections 484d to 484j, inclusive, or Section 487, 488, 496, 503,
20 518, or 666, unless any of the following applies:

21 (1) The person was convicted of a felony and has obtained a
22 certificate of rehabilitation under Chapter 3.5 (commencing with
23 Section 4852.01) of Title 6 of Part 3 of the Penal Code and the
24 information or accusation against him or her has been dismissed
25 pursuant to Section 1203.4 of the Penal Code.

26 (2) The person was convicted of a misdemeanor and the
27 information or accusation against him or her has been dismissed
28 pursuant to Section 1203.4 or 1203.4a of the Penal Code.

29 (3) The certificate holder was convicted of a felony or a
30 misdemeanor, but has previously disclosed the fact of each
31 conviction to the department, and the department has made a
32 determination in accordance with law that the conviction does not
33 disqualify the applicant from certification.

34 (b) An application or certificate shall be denied, suspended, or
35 revoked upon conviction in another state of an offense that, if
36 committed or attempted in this state, would have been punishable
37 as one or more of the offenses set forth in subdivision (a), unless
38 evidence of rehabilitation comparable to the certificate of
39 rehabilitation or dismissal of a misdemeanor set forth in paragraph
40 (1) or (2) of subdivision (a) is provided.

1 (c) (1) The department may deny an application or deny,
2 suspend, or revoke a certificate issued under this article for any of
3 the following:

4 (A) Unprofessional conduct, including, but not limited to,
5 incompetence, gross negligence, physical, mental, or verbal abuse
6 of patients, or misappropriation of property of patients or others.

7 (B) Conviction of a crime substantially related to the
8 qualifications, functions, and duties of a home health aide,
9 irrespective of a subsequent order under Section 1203.4, 1203.4a,
10 or 4852.13 of the Penal Code, where the department determines
11 that the applicant or certificate holder has not adequately
12 demonstrated that he or she has been rehabilitated and will present
13 a threat to the health, safety, or welfare of patients.

14 (C) Conviction for, or use of, any controlled substance as defined
15 in Division 10 (commencing with Section 11000) of this code, or
16 any dangerous drug, as defined in Section 4022 of the Business
17 and Professions Code, or alcoholic beverages, to an extent or in a
18 manner dangerous or injurious to the home health aide, any other
19 person, or the public, to the extent that this use would impair the
20 ability to conduct, with safety to the public, the practice authorized
21 by a certificate.

22 (D) Procuring a home health aide certificate by fraud,
23 misrepresentation, or mistake.

24 (E) Making or giving any false statement or information in
25 conjunction with the application for issuance of a home health aide
26 certificate or training and examination application.

27 (F) Impersonating any applicant, or acting as proxy for an
28 applicant, in any examination required under this article for the
29 issuance of a certificate.

30 (G) Impersonating another home health aide, a licensed
31 vocational nurse, or a registered nurse, or permitting or allowing
32 another person to use a certificate for the purpose of providing
33 nursing services.

34 (H) Violating or attempting to violate, directly or indirectly, or
35 assisting in or abetting the violation of, or conspiring to violate
36 any provision or term of, this article.

37 (2) In determining whether or not to deny an application or
38 deny, suspend, or revoke a certificate issued under this article
39 pursuant to this subdivision, the department shall take into

1 consideration the following factors as evidence of good character
2 and rehabilitation:

3 (A) The nature and seriousness of the offense under
4 consideration and its relationship to the person's employment
5 duties and responsibilities.

6 (B) Activities since conviction, including employment or
7 participation in therapy or education, that would indicate changed
8 behavior.

9 (C) The time that has elapsed since the commission of the
10 conduct or offense referred to in subparagraph (A) or (B) and the
11 number of offenses.

12 (D) The extent to which the person has complied with any terms
13 of parole, probation, restitution, or any other sanction lawfully
14 imposed against the person.

15 (E) Any rehabilitation evidence, including character references,
16 submitted by the person.

17 (F) Employment history and current employer recommendations.

18 (G) Circumstances surrounding the commission of the offense
19 that would demonstrate the unlikelihood of repetition.

20 (H) Granting by the Governor of a full and unconditional pardon.

21 (I) A certificate of rehabilitation from a superior court.

22 (d) When the department determines that a certificate shall be
23 suspended, the department shall specify the period of actual
24 suspension. The department may determine that the suspension
25 shall be stayed, placing the certificate holder on probation with
26 specified conditions for a period not to exceed two years. When
27 the department determines that probation is the appropriate action,
28 the certificate holder shall be notified that in lieu of the department
29 proceeding with a formal action to suspend the certification and
30 in lieu of an appeal pursuant to subdivision (g), the certificate
31 holder may request to enter into a diversion program agreement.
32 A diversion program agreement shall specify terms and conditions
33 related to matters including, but not limited to, work performance,
34 rehabilitation, training, counseling, progress reports, and treatment
35 programs. If a certificate holder successfully completes a diversion
36 program, no action shall be taken upon the allegations that were
37 the basis for the diversion agreement. Upon failure of the certificate
38 holder to comply with the terms and conditions of an agreement,
39 the department may proceed with a formal action to suspend or
40 revoke the certification.

(e) A plea or verdict of guilty, or a conviction following a plea of nolo contendere, shall be deemed a conviction within the meaning of this article. The department may deny an application or deny, suspend, or revoke a certification based on a conviction as provided in this article when the judgment of conviction is entered or when an order granting probation is made suspending the imposition of sentence.

(f) Upon determination to deny an application or deny, revoke, or suspend a certificate, the department shall notify the applicant or certificate holder in writing by certified mail of both of the following:

(1) The reasons for the determination.

(2) The applicant's or certificate holder's right to appeal the determination if the determination was made under subdivision (c).

(g) (1) Upon written notification that the department has determined that an application shall be denied or a certificate shall be denied, suspended, or revoked under subdivision (c), the applicant or certificate holder may request an administrative hearing by submitting a written request to the department within 20 business days of receipt of the written notification. Upon receipt of a written request, the department shall hold an administrative hearing pursuant to the procedures specified in Section 100171, except where those procedures are inconsistent with this section.

(2) A hearing under this section shall be conducted by a hearing officer or administrative law judge designated by the director at a location, other than the work facility, that is convenient to the applicant or certificate holder. The hearing shall be audio or video recorded and a written decision shall be sent by certified mail to the applicant or certificate holder within 30 calendar days of the hearing. Except as specified in subdivision (h), the effective date of an action to revoke or suspend a certificate shall be specified in the written decision, or if no administrative hearing is timely requested, the effective date shall be 21 business days from written notification of the department's determination to revoke or suspend.

(h) The department may revoke or suspend a certificate prior to any hearing when immediate action is necessary in the judgment of the director to protect the public welfare. Notice of this action, including a statement of the necessity of immediate action to protect the public welfare, shall be sent in accordance with

1 subdivision (f). If the certificate holder requests an administrative
2 hearing pursuant to subdivision (g), the department shall hold the
3 administrative hearing as soon as possible but not later than 30
4 calendar days from receipt of the request for a hearing. A written
5 hearing decision upholding or setting aside the action shall be sent
6 by certified mail to the certificate holder within 30 calendar days
7 of the hearing.

8 (i) Upon the expiration of the term of suspension, the certificate
9 holder shall be reinstated by the department and shall be entitled
10 to resume practice unless it is established to the satisfaction of the
11 department that the person has practiced as a home health aide in
12 California during the term of suspension. In this event, the
13 department shall revoke the person's certificate.

14 (j) Upon a determination to deny an application or deny, revoke,
15 or suspend a certificate, the department shall notify the employer
16 of the applicant or certificate holder in writing of that
17 determination, and whether the determination is final, or whether
18 a hearing is pending relating to this determination. If a licensee or
19 facility is required to deny employment or terminate employment
20 of the employee based upon notice from the state that the employee
21 is determined to be unsuitable for employment under this section,
22 the licensee or facility shall not incur criminal, civil, unemployment
23 insurance, workers' compensation, or administrative liability as a
24 result of that denial or termination.

25 SEC. 127. Section 1798.200 of the Health and Safety Code is
26 amended to read:

27 1798.200. (a) (1) (A) Except as provided in paragraph (2),
28 an employer of an EMT-I or EMT-II may conduct investigations,
29 as necessary, and take disciplinary action against an EMT-I or
30 EMT-II who is employed by that employer for conduct in violation
31 of subdivision (c). The employer shall notify the medical director
32 of the local EMS agency that has jurisdiction in the county in which
33 the alleged violation occurred within three days when an allegation
34 has been validated as a potential violation of subdivision (c).

35 (B) Each employer of an EMT-I or EMT-II employee shall
36 notify the medical director of the local EMS agency that has
37 jurisdiction in the county in which a violation related to subdivision
38 (c) occurred within three days after the EMT-I or EMT-II is
39 terminated or suspended for a disciplinary cause, the EMT-I or
40 EMT-II resigns following notification of an impending

1 investigation based upon evidence that would indicate the existence
2 of a disciplinary cause, or the EMT-I or EMT-II is removed from
3 EMT-related duties for a disciplinary cause after the completion
4 of the employer's investigation.

5 (C) At the conclusion of an investigation, the employer of an
6 EMT-I or EMT-II may develop and implement, in accordance with
7 the guidelines for disciplinary orders, temporary suspensions, and
8 conditions of probation adopted pursuant to Section 1797.184, a
9 disciplinary plan for the EMT-I or EMT-II. Upon adoption of the
10 disciplinary plan, the employer shall submit that plan to the local
11 EMS agency within three working days. The employer's
12 disciplinary plan may include a recommendation that the medical
13 director of the local EMS agency consider taking action against
14 the holder's certificate pursuant to paragraph (3).

15 (2) If an EMT-I or EMT-II is not employed by an ambulance
16 service licensed by the Department of the California Highway
17 Patrol or a public safety agency or if that ambulance service or
18 public safety agency chooses not to conduct an investigation
19 pursuant to paragraph (1) for conduct in violation of subdivision
20 (c), the medical director of a local EMS agency shall conduct the
21 investigations, and, upon a determination of disciplinary cause,
22 take disciplinary action as necessary against the EMT-I or EMT-II.
23 At the conclusion of these investigations, the medical director shall
24 develop and implement, in accordance with the recommended
25 guidelines for disciplinary orders, temporary orders, and conditions
26 of probation adopted pursuant to Section 1797.184, a disciplinary
27 plan for the EMT-I or EMT-II. The medical director's disciplinary
28 plan may include action against the holder's certificate pursuant
29 to paragraph (3).

30 (3) The medical director of the local EMS agency may, upon a
31 determination of disciplinary cause and in accordance with
32 regulations for disciplinary processes adopted pursuant to Section
33 1797.184, deny, suspend, or revoke any EMT-I or EMT-II
34 certificate issued under this division, or may place any EMT-I or
35 EMT-II certificate holder on probation, upon the finding by that
36 medical director of the occurrence of any of the actions listed in
37 subdivision (c) and the occurrence of one of the following:

38 (A) The EMT-I or EMT-II employer, after conducting an
39 investigation, failed to impose discipline for the conduct under
40 investigation, or the medical director makes a determination that

1 the discipline imposed was not according to the guidelines for
2 disciplinary orders and conditions of probation and the conduct of
3 the EMT-I or EMT-II certificate holder constitutes grounds for
4 disciplinary action against the certificate.

5 (B) Either the employer of an EMT-I or EMT-II further
6 determines, after an investigation conducted under paragraph (1),
7 or the medical director determines after an investigation conducted
8 under paragraph (2), that the conduct requires disciplinary action
9 against the certificate.

10 (4) The medical director of the local EMS agency, after
11 consultation with the employer of an EMT-I or EMT-II, may
12 temporarily suspend, prior to a hearing, any EMT-I or EMT-II
13 certificate or both EMT-I and EMT-II certificates upon a
14 determination that both of the following conditions have been met:

15 (A) The certificate holder has engaged in acts or omissions that
16 constitute grounds for revocation of the EMT-I or EMT-II
17 certificate.

18 (B) Permitting the certificate holder to continue to engage in
19 the certified activity without restriction would pose an imminent
20 threat to the public health or safety.

21 (5) If the medical director of the local EMS agency temporarily
22 suspends a certificate, the local EMS agency shall notify the
23 certificate holder that his or her EMT-I or EMT-II certificate is
24 suspended and shall identify the reasons therefor. Within three
25 working days of the initiation of the suspension by the local EMS
26 agency, the agency and employer shall jointly investigate the
27 allegation in order for the agency to make a determination of the
28 continuation of the temporary suspension. All investigatory
29 information not otherwise protected by law held by the agency
30 and employer shall be shared between the parties via facsimile
31 transmission or overnight mail relative to the decision to
32 temporarily suspend. The local EMS agency shall decide, within
33 15 calendar days, whether to serve the certificate holder with an
34 accusation pursuant to Chapter 5 (commencing with Section 11500)
35 of Part 1 of Division 3 of Title 2 of the Government Code. If the
36 certificate holder files a notice of defense, the hearing shall be held
37 within 30 days of the local EMS agency's receipt of the notice of
38 defense. The temporary suspension order shall be deemed vacated
39 if the local EMS agency fails to make a final determination on the

1 merits within 15 days after the administrative law judge renders
2 the proposed decision.

3 (6) The medical director of the local EMS agency shall refer,
4 for investigation and discipline, any complaint received on an
5 EMT-I or EMT-II to the relevant employer within three days of
6 receipt of the complaint, pursuant to subparagraph (A) of paragraph
7 (1) of subdivision (a).

8 (b) The authority may deny, suspend, or revoke any EMT-P
9 license issued under this division, or may place any EMT-P license
10 issued under this division, or may place any EMT-P licenseholder
11 on probation upon the finding by the director of the occurrence of
12 any of the actions listed in subdivision (c). Proceedings against
13 any EMT-P license or licenseholder shall be held in accordance
14 with Chapter 5 (commencing with Section 11500) of Part 1 of
15 Division 3 of Title 2 of the Government Code.

16 (c) Any of the following actions shall be considered evidence
17 of a threat to the public health and safety and may result in the
18 denial, suspension, or revocation of a certificate or license issued
19 under this division, or in the placement on probation of a certificate
20 holder or licenseholder under this division:

21 (1) Fraud in the procurement of any certificate or license under
22 this division.

23 (2) Gross negligence.

24 (3) Repeated negligent acts.

25 (4) Incompetence.

26 (5) The commission of any fraudulent, dishonest, or corrupt act
27 that is substantially related to the qualifications, functions, and
28 duties of prehospital personnel.

29 (6) Conviction of any crime which is substantially related to
30 the qualifications, functions, and duties of prehospital personnel.
31 The record of conviction or a certified copy of the record shall be
32 conclusive evidence of the conviction.

33 (7) Violating or attempting to violate directly or indirectly, or
34 assisting in or abetting the violation of, or conspiring to violate,
35 any provision of this division or the regulations adopted by the
36 authority pertaining to prehospital personnel.

37 (8) Violating or attempting to violate any federal or state statute
38 or regulation that regulates narcotics, dangerous drugs, or
39 controlled substances.

1 (9) Addiction to, the excessive use of, or the misuse of, alcoholic
2 beverages, narcotics, dangerous drugs, or controlled substances.

3 (10) Functioning outside the supervision of medical control in
4 the field care system operating at the local level, except as
5 authorized by any other license or certification.

6 (11) Demonstration of irrational behavior or occurrence of a
7 physical disability to the extent that a reasonable and prudent
8 person would have reasonable cause to believe that the ability to
9 perform the duties normally expected may be impaired.

10 (12) Unprofessional conduct exhibited by any of the following:

11 (A) The mistreatment or physical abuse of any patient resulting
12 from force in excess of what a reasonable and prudent person
13 trained and acting in a similar capacity while engaged in the
14 performance of his or her duties would use if confronted with a
15 similar circumstance. Nothing in this section shall be deemed to
16 prohibit an EMT-I, EMT-II, or EMT-P from assisting a peace
17 officer, or a peace officer who is acting in the dual capacity of
18 peace officer and EMT-I, EMT-II, or EMT-P, from using that force
19 that is reasonably necessary to effect a lawful arrest or detention.

20 (B) The failure to maintain confidentiality of patient medical
21 information, except as disclosure is otherwise permitted or required
22 by law in Part 2.6 (commencing with Section 56) of Division 1 of
23 the Civil Code.

24 (C) The commission of any sexually related offense specified
25 under Section 290 of the Penal Code.

26 (d) The information shared among EMT-I, EMT-II, and EMT-P
27 employers, medical directors of local EMS agencies, the authority,
28 and EMT-I and EMT-II certifying entities shall be deemed to be
29 an investigative communication that is exempt from public
30 disclosure as a public record pursuant to subdivision (f) of Section
31 6254 of the Government Code. A formal disciplinary action against
32 an EMT-I, EMT-II, or EMT-P shall be considered a public record
33 available to the public, unless otherwise protected from disclosure
34 pursuant to state or federal law.

35 (e) For purposes of this section, “disciplinary cause” means an
36 act that is substantially related to the qualifications, functions, and
37 duties of an EMT-I, EMT-II, or EMT-P and is evidence of a threat
38 to the public health and safety described in subdivision (c).

39 SEC. 128. Section 13221 of the Health and Safety Code is
40 amended to read:

1 13221. The State Fire Marshal shall adopt regulations for the
2 furnishing of emergency procedure information according to this
3 chapter. Those regulations may include the general contents of
4 brochures, pamphlets, signs, or video recordings used in furnishing
5 emergency procedure information, but shall provide for at least
6 the following:

7 (a) A reference to the posting of exit plans for the structure.

8 (b) A general explanation of the operation of the fire alarm
9 system of the structure.

10 (c) Other fire emergency procedures.

11 SEC. 129. Section 25396 of the Health and Safety Code is
12 amended to read:

13 25396. Unless the context indicates otherwise, the following
14 definitions govern the construction of this chapter.

15 (a) “Affected community” means the local residents or workers
16 living or working, and owners of businesses operating, in proximity
17 to the site, who are, or may be, directly impacted by the conditions
18 at the site, or by any response action. “Affected community” also
19 includes the legislative body of the jurisdiction in which a site is
20 located.

21 (b) “Agency” means the California Environmental Protection
22 Agency.

23 (c) “Arbitration panel” means the arbitration panel convened
24 pursuant to Section 25398.10.

25 (d) “Beneficial uses of water” means uses of the waters of the
26 state that are identified in the current State Water Resources
27 Control Board and California regional water quality control boards’
28 water quality control plans for the area in which the site is located.

29 (e) “Department” means the Department of Toxic Substances
30 Control.

31 (f) “Engineering controls” means measures to control or contain
32 migration of hazardous substances or to prevent, minimize, or
33 mitigate environmental damage which may otherwise result from
34 a release or threatened release, including, but not limited to, caps,
35 covers, dikes, trenches, leachate collection systems, treatment
36 systems, and groundwater containment systems or procedures.

37 (g) “Federal act” means the Comprehensive Environmental
38 Response, Compensation, and Liability Act, as amended (42 U.S.C.
39 Sec. 9601 et seq.).

1 (h) “Fund administrator” means the state officer assigned the
2 responsibility of protecting the viability of the trust fund as the
3 representative of the state for the orphan share in all actions
4 concerning apportionment of liability if there is a potential
5 apportionment of liability to the orphan share for payment from
6 the trust fund.

7 (i) “Hazardous substance” shall have the same meaning as set
8 forth in Sections 25316 and 25317.

9 (j) (1) “Insolvent” means a person or entity who has received
10 a discharge of liability under Section 727, 944, 1141, 1228, or
11 1328 of Title 11 of the United States Code, for prepetition response
12 costs relating to a site selected for response actions pursuant to
13 this chapter.

14 (2) Notwithstanding paragraph (1), a person or entity is not
15 insolvent with respect to any payment that the department receives
16 or will receive for any prepetition response costs as a result of the
17 bankruptcy, or with respect to any postpetition response costs.

18 (k) “Interim endangerment” means conditions at a site which
19 pose a significant risk either of harm to human health or of serious
20 environmental damage unless immediate response action is initiated
21 before remedial action measures set forth in a remedial action plan
22 prepared for the site are implemented.

23 (l) “Land use controls” means recorded instruments restricting
24 the present and future uses of the site, including, but not limited
25 to, recorded easements, covenants, restrictions, or servitudes, or
26 any combination thereof, as appropriate. Land use controls shall
27 run with the land from the date of recordation, shall bind all of the
28 owners of the land, and their heirs, successors, and assignees, and
29 the agents, employees, and lessees of the owners, heirs, successors,
30 and assignees, and shall be enforceable by the department pursuant
31 to Article 8 (commencing with Section 25180) of Chapter 6.5.

32 (m) “Orphan share” means that share of liability for the costs
33 of response actions apportioned to responsible persons who are
34 insolvent or cannot be identified or located. The department may
35 adopt regulations to further define a process to determine when a
36 responsible person cannot be identified or located.

37 (n) “Person” shall have the same meaning as set forth in Section
38 25319.

39 (o) “Planned use” means the reasonably expected future land
40 uses based on all of the following factors:

1 (1) The land use history of the site and surrounding properties,
2 the current land uses of the site and surrounding properties and
3 recent development patterns in the area where the site is located.

4 (2) Land use designations at the site and surrounding properties,
5 including current and likely future zoning and local land use plans
6 and the presence, if any, of groundwater and surface water recharge
7 areas.

8 (3) The potential for economic redevelopment.

9 (4) Current plans for the site by the property owner or owners.

10 (5) Affected community comments on the proposals for use of
11 the site.

12 (p) “Release” has the same meaning as set forth in Sections
13 25320 and 25321.

14 (q) “Remedy” or “remedial action” means actions that are
15 necessary to prevent, minimize, or mitigate damage that may result
16 from a release or threatened release of a hazardous substance and
17 that, when carried through to completion, allow a site to be
18 permanently used for its planned use without any significant risk
19 to human health or any significant potential for future
20 environmental damage. “Remedy” or “remedial action” includes,
21 but is not limited to, all of the following:

22 (1) Actions at the location of the release, such as storage;
23 confinement; perimeter protection using dikes, trenches, or ditches;
24 clay cover; neutralization; cleanup of released hazardous substances
25 and associated contaminated materials; recycling, reuse, diversion,
26 destruction, or segregation of reactive wastes; dredging, excavation,
27 repair, or replacement of leaking containers; collection of leachate
28 and runoff; onsite treatment or incineration; provision of alternative
29 water supplies; and any monitoring reasonably required to ensure
30 that these actions protect human health and safety, or the
31 environment.

32 (2) The costs of permanent relocation of residents and businesses
33 and community facilities where the Governor determines that,
34 alone or in combination with other measures, that relocation is
35 more cost effective than, and environmentally preferable to, the
36 transportation, storage, treatment, destruction, or secure disposition
37 offsite of hazardous substances, or may otherwise be necessary to
38 protect human health and safety, or the environment.

1 (3) Offsite transport and offsite storage, treatment, destruction,
2 or secure disposition of hazardous substances and associated
3 contaminated materials.

4 (r) “Remove” or “removal” means the cleanup or removal of
5 released hazardous substances from the environment; those actions
6 that may be necessarily taken in the event of the threat or release
7 of hazardous substances into the environment; those actions that
8 may be necessary to monitor, assess, and evaluate the release, or
9 threat of release, of hazardous substances; the disposal of removed
10 material; and the taking of other actions which may be necessary
11 to prevent, minimize, or mitigate damage to human health and
12 safety, or the environment, that may otherwise result from a release
13 or threat of release. “Remove” or “removal” also includes, but is
14 not limited to, security fencing or other measures to limit access,
15 provision of alternative water supplies, and temporary evacuation
16 and housing of threatened individuals not otherwise provided.

17 (s) “Respond,” “response,” or “response action” means removal
18 actions, and remedial actions, including, but not limited to,
19 operation and maintenance measures.

20 (t) “Response costs” means all costs incurred by the state or a
21 responsible person in taking response actions under this chapter
22 at a specific site, including costs incurred by a state agency in
23 implementing and administering this chapter pursuant to the
24 limitations established in subdivision (f) of Section 25399, and in
25 overseeing response actions under this chapter. Those costs shall
26 include all costs incurred by the state in relation to any judicial
27 review of a decision of an arbitration panel pursuant to subdivision
28 (e) of Section 25398.10 or any arbitration conducted pursuant to
29 this chapter.

30 (u) “Responsible person” has the same meaning as set forth in
31 Section 25323.5 for “responsible party” or “liable person.”

32 (v) “Secretary” means the Secretary for Environmental
33 Protection.

34 (w) “Site” means any building, structure, installation, equipment,
35 pipe or pipeline (including any pipe into a sewer or publicly owned
36 treatment works), well, pit, pond, lagoon, impoundment, ditch,
37 landfill, storage container, motor vehicle, rolling stock, or aircraft,
38 or any area where a hazardous substance has been deposited, stored,
39 disposed of, or placed, or otherwise come to be located; but does
40 not include any consumer product in consumer use or any vessel.

1 (x) “Site Designation Committee” or “committee” means the
2 Site Designation Committee created pursuant to Section 25261.

3 (y) “State board” means the State Water Resources Control
4 Board.

5 (z) “Trust fund” means the Expedited Site Remediation Trust
6 Fund created pursuant to subdivision (a) of Section 25399.1.

7 SEC. 130. Section 44272 of the Health and Safety Code is
8 amended to read:

9 44272. (a) The Alternative and Renewable Fuel and Vehicle
10 Technology Program is hereby created. The program shall be
11 administered by the commission. The commission shall implement
12 the program by regulation pursuant to the requirements of Chapter
13 3.5 (commencing with Section 11340) of Part 1 of Division 3 of
14 Title 2 of the Government Code. The program shall provide, upon
15 appropriation by the Legislature, competitive grants, revolving
16 loans, loan guarantees, loans, or other appropriate funding
17 measures, to public agencies, vehicle and technology entities,
18 businesses and projects, public-private partnerships, workforce
19 training partnerships and collaboratives, fleet owners, consumers,
20 recreational boaters, and academic institutions to develop and
21 deploy innovative technologies that transform California’s fuel
22 and vehicle types to help attain the state’s climate change policies.
23 The emphasis of this program shall be to develop and deploy
24 technology and alternative and renewable fuels in the marketplace,
25 without adopting any one preferred fuel or technology.

26 (b) A project funded by the commission shall be approved at a
27 noticed public hearing of the commission and shall be consistent
28 with the priorities established by the investment plan adopted
29 pursuant to Section 44272.5.

30 (c) The commission shall provide preferences to those projects
31 that maximize the goals of the Alternative and Renewable Fuel
32 and Vehicle Technology Program, based on the following criteria,
33 as applicable:

34 (1) The project’s ability to provide a measurable transition from
35 the nearly exclusive use of petroleum fuels to a diverse portfolio
36 of viable alternative fuels that meet petroleum reduction and
37 alternative fuel use goals.

38 (2) The project’s consistency with existing and future state
39 climate change policy and low-carbon fuel standards.

1 (3) The project's ability to reduce criteria air pollutants and air
2 toxics and reduce or avoid multimedia environmental impacts.

3 (4) The project's ability to decrease, on a life-cycle basis, the
4 discharge of water pollutants or any other substances known to
5 damage human health or the environment, in comparison to the
6 production and use of California Phase 2 Reformulated Gasoline
7 or diesel fuel produced and sold pursuant to California diesel fuel
8 regulations set forth in Article 2 (commencing with Section 2280)
9 of Chapter 5 of Division 3 of Title 13 of the California Code of
10 Regulations.

11 (5) The project does not adversely impact the sustainability of
12 the state's natural resources, especially state and federal lands.

13 (6) The project provides nonstate matching funds.

14 (7) The project provides economic benefits for California by
15 promoting California-based technology firms, jobs, and businesses.

16 (8) The project uses existing or proposed fueling infrastructure
17 to maximize the outcome of the project.

18 (9) The project's ability to reduce on a life cycle assessment
19 greenhouse gas emissions by at least 10 percent, and higher
20 percentages in the future, from current reformulated gasoline and
21 diesel fuel standards established by the state board.

22 (10) The project's use of alternative fuel blends of at least 20
23 percent, and higher blend ratios in the future, with a preference
24 for projects with higher blends.

25 (11) The project drives new technology advancement for
26 vehicles, vessels, engines, and other equipment, and promotes the
27 deployment of that technology in the marketplace.

28 (d) Only the following shall be eligible for funding:

29 (1) Alternative and renewable fuel projects to develop and
30 improve alternative and renewable low-carbon fuels, including
31 electricity, ethanol, dimethyl ether, renewable diesel, natural gas,
32 hydrogen, and biomethane, among others, and their feedstocks
33 that have high potential for long-term or short-term
34 commercialization, including projects that lead to sustainable
35 feedstocks.

36 (2) Demonstration and deployment projects that optimize
37 alternative and renewable fuels for existing and developing engine
38 technologies.

39 (3) Projects to produce alternative and renewable low-carbon
40 fuels in California.

1 (4) Projects to decrease the overall impact of an alternative and
2 renewable fuel's life cycle carbon footprint and increase
3 sustainability.

4 (5) Alternative and renewable fuel infrastructure, fueling
5 stations, and equipment. The preference in paragraph (10) of
6 subdivision (c) shall not apply to renewable diesel or biodiesel
7 infrastructure, fueling stations, and equipment used solely for
8 renewable diesel or biodiesel fuel.

9 (6) Projects to develop and improve light-, medium-, and
10 heavy-duty vehicle technologies that provide for better fuel
11 efficiency and lower greenhouse gas emissions, alternative fuel
12 usage and storage, or emission reductions, including propulsion
13 systems, advanced internal combustion engines with a 40-percent
14 or better efficiency level over the current market standard,
15 lightweight materials, energy storage, control systems and system
16 integration, physical measurement and metering systems and
17 software, development of design standards and testing and
18 certification protocols, battery recycling and reuse, engine and fuel
19 optimization electronic and electrified components, hybrid
20 technology, plug-in hybrid technology, battery electric vehicle
21 technology, fuel cell technology, and conversions of hybrid
22 technology to plug-in technology through the installation of safety
23 certified supplemental battery modules.

24 (7) Programs and projects that accelerate the commercialization
25 of vehicles and alternative and renewable fuels including buy-down
26 programs through near-market and market-path deployments,
27 advanced technology warranty or replacement insurance,
28 development of market niches, supply-chain development, and
29 research related to the pedestrian safety impacts of vehicle
30 technologies and alternative and renewable fuels.

31 (8) Programs and projects to retrofit medium- and heavy-duty
32 on-road and nonroad vehicle fleets with technologies that create
33 higher fuel efficiencies, including alternative and renewable fuel
34 vehicles and technologies, idle management technology, and
35 aerodynamic retrofits that decrease fuel consumption.

36 (9) Infrastructure projects that promote alternative and renewable
37 fuel infrastructure development connected with existing fleets,
38 public transit, and existing transportation corridors, including
39 physical measurement or metering equipment and truck stop
40 electrification.

1 (10) Workforce training programs related to alternative and
2 renewable fuel feedstock production and extraction, renewable
3 fuel production, distribution, transport, and storage,
4 high-performance and low-emission vehicle technology and high
5 tower electronics, automotive computer systems, mass transit fleet
6 conversion, servicing, and maintenance, and other sectors or
7 occupations related to the purposes of this chapter.

8 (11) Block grants administered by not-for-profit technology
9 entities for multiple projects, education and program promotion
10 within California, and development of alternative and renewable
11 fuel and vehicle technology centers.

12 (12) Life cycle and multimedia analyses, sustainability and
13 environmental impact evaluations, and market, financial, and
14 technology assessments performed by a state agency to determine
15 the impacts of increasing the use of low-carbon transportation fuels
16 and technologies, and to assist in the preparation of the investment
17 plan and program implementation.

18 (e) The commission may make a single source or sole source
19 award pursuant to this section for applied research. The same
20 requirements set forth in Section 25620.5 of the Public Resources
21 Code shall apply to awards made on a single source basis or a sole
22 source basis. This subdivision does not authorize the commission
23 to make a single source or sole source award for a project or
24 activity other than for applied research.

25 (f) Until January 1, 2012, the commission may contract with
26 the Treasurer to expend funds through programs implemented by
27 the Treasurer, if that expenditure is consistent with all of the
28 requirements of this chapter.

29 SEC. 131. Section 50843.5 of the Health and Safety Code is
30 amended to read:

31 50843.5. (a) Subject to the availability of funding, the
32 department shall make matching grants available to cities, counties,
33 cities and counties, and charitable nonprofit organizations
34 organized under Section 501(c)(3) of the Internal Revenue Code
35 that have created and are operating or will operate housing trust
36 funds. These funds shall be awarded through the issuance of a
37 Notice of Funding Availability (NOFA).

38 (1) Applicants that provide matching funds from a source or
39 sources other than impact fees on residential development shall
40 receive a priority for funding.

1 (2) The department shall set aside funding for new trusts, as
2 defined by the department in the NOFA.

3 (b) Housing trusts eligible for funding under this section shall
4 have the following characteristics:

5 (1) Utilization of a public or joint public and private fund
6 established by legislation, ordinance, resolution, or a public-private
7 partnership to receive specific revenue to address local housing
8 needs.

9 (2) Receipt of ongoing revenues from dedicated sources of
10 funding such as taxes, fees, loan repayments, or private
11 contributions.

12 (c) The minimum allocation to an applicant that is a newly
13 established trust, and is in a county with a population that conforms
14 with paragraph (2) of subdivision (c) of Section 53545.9, shall be
15 five hundred thousand dollars (\$500,000). The minimum allocation
16 for all other trusts shall be one million dollars (\$1,000,000). No
17 applicant may receive an allocation in excess of two million dollars
18 (\$2,000,000). All funds provided pursuant to this section shall be
19 matched on a dollar-for-dollar basis with moneys that are not
20 required by any state or federal law to be spent on housing. No
21 application for an existing housing trust shall be considered unless
22 the department has received adequate documentation of the deposit
23 in the local housing trust fund of the local match and the identity
24 of the source of matching funds. An application for a new trust
25 shall not be considered unless the department has received adequate
26 documentation, as determined by the department, that an ordinance
27 imposing or dedicating a tax or fee to be deposited into the new
28 trust has been enacted or the applicant has adopted a legally binding
29 commitment to deposit matching funds into the new trust. Funds
30 shall not be disbursed by the department to any trust until all
31 matching funds are on deposit and then funds may be disbursed
32 only in amounts necessary to fund projects identified to receive a
33 loan from the trust within a reasonable period of time, as
34 determined by the department. Applicants shall be required to
35 continue funding the local housing trust fund from these identified
36 local sources, and continue the trust in operation, for a period of
37 no less than five years from the date of award. If the funding is
38 not continued for a five-year period, then (1) the amount of the
39 department's grant to the local housing trust fund, to the extent
40 that the trust fund has unencumbered funds available, shall be

1 immediately repaid, and (2) any payments from any projects funded
2 by the local housing trust fund that would have been paid to the
3 local housing trust fund shall be paid instead to the department
4 and used for the program or its successor. The total amount paid
5 to the department pursuant to (1) and (2), combined, shall not
6 exceed the amount of the department's grant.

7 (d) (1) Funds shall be used for the predevelopment costs,
8 acquisition, construction, or rehabilitation of the following types
9 of housing or projects:

10 (A) Rental housing projects or units within rental housing
11 projects. The affordability of all assisted units shall be restricted
12 for not less than 55 years.

13 (B) Emergency shelters, Safe Havens, and transitional housing,
14 as these terms are defined in Section 50801.

15 (C) For sale housing projects or units within for sale housing
16 projects.

17 (2) At least 30 percent of the total amount of the grant and the
18 match shall be expended on projects, units, or shelters that are
19 affordable to, and restricted for, extremely low income persons
20 and families, as defined in Section 50106. No more than 20 percent
21 of the total amount of the grant and the match shall be expended
22 on projects or units affordable to, and restricted for,
23 moderate-income persons and families whose income does not
24 exceed 120 percent of the area median income. The remaining
25 funds shall be used for projects, units, or shelters that are affordable
26 to, and restricted for, lower income persons and families, as defined
27 in Section 50079.5.

28 (3) If funds are used for the acquisition, construction, or
29 rehabilitation of for sale housing projects or units within for sale
30 housing projects, the grantee shall record a deed restriction against
31 the property that will ensure compliance with one of the following
32 requirements upon resale of the for sale housing units, unless it is
33 in conflict with the requirements of another public funding source
34 or law:

35 (A) If the property is sold within 30 years from the date that
36 trust funds are used to acquire, construct, or rehabilitate the
37 property, the owner or subsequent owner shall sell the home at an
38 affordable housing cost, as described in Section 50052.5, to a
39 household that meets the relevant income qualifications.

(B) The owner and grantee shall share the equity in the unit pursuant to an equity sharing agreement. The grantee shall reuse the proceeds of the equity sharing agreement consistent with this section. To the extent not in conflict with another public funding source or law, all of the following shall apply to the equity-sharing agreement provided for by the deed restriction:

(i) Upon resale by an owner-occupant of the home, the owner-occupant of the home shall retain the market value of any improvements, the downpayment, and his or her proportionate share of appreciation. The grantee shall recapture any initial subsidy and its proportionate share of appreciation, which shall then be used to make housing available to persons and families of the same income category as the original grant and for any type of housing or shelter specified in paragraph (1).

(ii) For purposes of this subdivision, the initial subsidy shall be equal to the fair market value of the home at the time of initial sale to the owner-occupant minus the initial sale price to the owner-occupant, plus the amount of any downpayment assistance or mortgage assistance. If upon resale by the owner-occupant the market value is lower than the initial market value, the value at the time of the resale shall be used as the initial market value.

(iii) For purposes of this subdivision, the grantee's proportionate share of appreciation shall be equal to the ratio of the initial subsidy to the fair market value of the home at the time of the initial sale.

(e) Loan repayments shall accrue to the grantee housing trust for use pursuant to this section. If the trust no longer exists, loan repayments shall accrue to the department for use in the program or its successor.

(f) (1) In order for a city, county, or city and county to be eligible for funding, the applicant shall, at the time of application, meet both of the following requirements:

(A) Have an adopted housing element that the department has determined, pursuant to Section 65585 of the Government Code, is in substantial compliance with the requirements of Article 10.6 (commencing with Section 65580) of Chapter 3 of Division 1 of Title 7 of the Government Code.

(B) Have submitted to the department the annual progress report required by Section 65400 of the Government Code within the preceding 12 months, if the department has adopted the forms and

1 definitions pursuant to subparagraph (B) of paragraph (2) of
2 subdivision (a) of Section 65400 of the Government Code.

3 (2) In order for a nonprofit organization applicant to be eligible
4 for funding, the applicant shall agree to utilize funds provided
5 under this chapter only for projects located in cities, counties, or
6 a city and county that, at the time of application, meet both of the
7 following requirements:

8 (i) Have an adopted housing element that the department has
9 determined, pursuant to Section 65585 of the Government Code,
10 to be in substantial compliance with the requirements of Article
11 10.6 (commencing with Section 65580) of Chapter 3 of Division
12 1 of Title 7 of the Government Code.

13 (ii) Have submitted to the department the annual progress report
14 required by Section 65400 of the Government Code within the
15 preceding 12 months, if the department has adopted the forms and
16 definitions pursuant to subparagraph (B) of paragraph (2) of
17 subdivision (a) of Section 65400 of the Government Code.

18 (g) Recipients shall have held, or shall agree to hold, a public
19 hearing or hearings to discuss and describe the project or projects
20 that will be financed with funds provided pursuant to this section.
21 As a condition of receiving a grant pursuant to this section, any
22 nonprofit organization shall agree that it will hold one public
23 meeting a year to discuss the criteria that will be used to select
24 projects to be funded. That meeting shall be open to the public,
25 and public notice of this meeting shall be provided, except to the
26 extent that any similar meeting of a city or county would be
27 permitted to be held in closed session.

28 (h) No more than 5 percent of the funds appropriated to the
29 department for the purposes of this program shall be used to pay
30 the costs of administration of this section.

31 (i) A local housing trust fund shall encumber funds provided
32 pursuant to this section no later than 36 months after receipt. Any
33 funds not encumbered within that period shall revert to the
34 department for use in the program or its successor.

35 (j) Recipients shall be required to file periodic reports with the
36 department regarding the use of funds provided pursuant to this
37 section. No later than December 31 of each year in which funds
38 are awarded by the program, the department shall provide a report
39 to the Legislature regarding the number of trust funds created, a

1 description of the projects supported, the number of units assisted,
2 and the amount of matching funds received.

3 SEC. 132. Section 103526.5 of the Health and Safety Code is
4 amended to read:

5 103526.5. (a) Each certified copy of a birth, death, or marriage
6 record issued pursuant to Section 103525 shall include the date
7 issued, the name of the issuing officer, the signature of the issuing
8 officer, whether that is the State Registrar, local registrar, county
9 recorder, or county clerk, or an authorized facsimile thereof, and
10 the seal of the issuing office.

11 (b) All certified copies of birth, death, and marriage records
12 issued pursuant to Section 103525 shall be printed on chemically
13 sensitized security paper that measures 8 ½ inches by 11 inches
14 and that has the following features:

- 15 (1) Intaglio print.
- 16 (2) Latent image.
- 17 (3) Fluorescent, consecutive numbering with matching barcode.
- 18 (4) Microprint line.
- 19 (5) Prismatic printing.
- 20 (6) Watermark.
- 21 (7) Void pantograph.
- 22 (8) Fluorescent security threads.
- 23 (9) Fluorescent fibers.
- 24 (10) Any other security features deemed necessary by the State
25 Registrar.

26 (c) The State Registrar, local registrars, county recorders, and
27 county clerks shall take precautions to ensure that uniform and
28 consistent standards are used statewide to safeguard the security
29 paper described in subdivision (b), including, but not limited to,
30 the following measures:

- 31 (1) Security paper shall be maintained under secure conditions
32 so as not to be accessible to the public.
- 33 (2) A log shall be kept of all visitors allowed in the area where
34 security paper is stored.
- 35 (3) All spoilage shall be accounted for and subsequently
36 destroyed by shredding on the premises.

37 SEC. 133. Section 112877 of the Health and Safety Code, as
38 amended by Section 120 of Chapter 140 of the Statutes of 2009,
39 is repealed.

1 SEC. 134. Section 114850 of the Health and Safety Code is
2 amended to read:

3 114850. As used in this chapter:

4 (a) “Department” means the State Department of Public Health.

5 (b) “Committee” means the Radiologic Technology Certification
6 Committee.

7 (c) “Radiologic technology” means the application of X-rays
8 on human beings for diagnostic or therapeutic purposes.

9 (d) “Radiologic technologist” means any person, other than a
10 licentiate of the healing arts, making application of X-rays to
11 human beings for diagnostic or therapeutic purposes pursuant to
12 subdivision (b) of Section 114870.

13 (e) “Limited permit” means a permit issued pursuant to
14 subdivision (c) of Section 114870 to persons to conduct radiologic
15 technology limited to the performance of certain procedures or the
16 application of X-rays to specific areas of the human body, except
17 for a mammogram.

18 (f) “Approved school for radiologic technologists” means a
19 school that the department has determined provides a course of
20 instruction in radiologic technology that is adequate to meet the
21 purposes of this chapter.

22 (g) “Supervision” means responsibility for, and control of,
23 quality, radiation safety, and technical aspects of all X-ray
24 examinations and procedures.

25 (h) (1) “Licentiate of the healing arts” means a person licensed
26 under the provisions of the Medical Practice Act, the provisions
27 of the initiative act entitled “An act prescribing the terms upon
28 which licenses may be issued to practitioners of chiropractic,
29 creating the State Board of Chiropractic Examiners and declaring
30 its powers and duties, prescribing penalties for violation thereof,
31 and repealing all acts and parts of acts inconsistent herewith,”
32 approved by electors November 7, 1922, as amended, or the
33 Osteopathic Act.

34 (2) For purposes of Section 114872, a licentiate of the healing
35 arts means a person licensed under the Physician Assistant Practice
36 Act (Chapter 7.7 (commencing with Section 3500) of Division 2
37 of the Business and Professions Code) who practices under the
38 supervision of a qualified physician and surgeon pursuant to the
39 act and pursuant to Division 13.8 of Title 16 of the California Code
40 of Regulations.

(i) “Certified supervisor or operator” means a licentiate of the healing arts who has been certified under subdivision (e) of Section 114870 or 107111 to supervise the operation of X-ray machines or to operate X-ray machines, or both.

(j) “Student of radiologic technology” means a person who has started and is in good standing in a course of instruction that, if completed, would permit the person to be certified a radiologic technologist or granted a limited permit upon satisfactory completion of any examination required by the department. “Student of radiologic technology” does not include any person who is a student in a school of medicine, chiropractic, podiatry, dentistry, dental radiography, or dental hygiene.

(k) “Mammogram” means an X-ray image of the human breast.

(l) “Mammography” means the procedure for creating a mammogram.

SEC. 135. Section 116064.2 of the Health and Safety Code is amended to read:

116064.2. (a) As used in this section, the following words have the following meanings:

(1) “ASME/ANSI performance standard” means a standard that is accredited by the American National Standards Institute and published by the American Society of Mechanical Engineers.

(2) “ASTM performance standard” means a standard that is developed and published by ASTM International.

(3) “Main drain” means a submerged suction outlet typically located at the bottom of a swimming pool that conducts water to a recirculating pump.

(4) “Public swimming pool” means an outdoor or indoor structure, whether in-ground or above-ground, intended for swimming or recreational bathing, including a swimming pool, hot tub, spa, or nonportable wading pool, that is any of the following:

(A) Open to the public generally, whether for a fee or free of charge.

(B) Open exclusively to members of an organization and their guests, residents of a multiunit apartment building, apartment complex, residential real estate development, or other multifamily residential area, or patrons of a hotel or other public accommodations facility.

1 (C) Located on the premises of an athletic club, or public or
2 private school.

3 (5) “Qualified individual” means a contractor who holds a
4 current valid license issued by the State of California or a
5 professional engineer licensed in the State of California who has
6 experience working on public swimming pools.

7 (6) “Safety vacuum release system” means a vacuum release
8 system that ceases operation of the pump, reverses the circulation
9 flow, or otherwise provides a vacuum release at a suction outlet
10 when a blockage is detected.

11 (7) “Skimmer equalizer line” means a suction outlet located
12 below the waterline and connected to the body of a skimmer that
13 prevents air from being drawn into the pump if the water level
14 drops below the skimmer weir. However, a skimmer equalizer line
15 is not a main drain.

16 (8) “Unblockable drain” means a drain of any size and shape
17 that a human body cannot sufficiently block to create a suction
18 entrapment hazard.

19 (b) Subject to subdivision (c), an ASME/ANSI or ASTM
20 performance standard relating to antientrapment devices or systems
21 or an amendment or successor to, or later published edition of an
22 ASME/ANSI or ASTM performance standard relating to
23 antientrapment devices or systems shall become the applicable
24 standard in California 90 days after publication by ASME/ANSI
25 or ASTM, respectively, provided that the performance standard
26 or amendment or successor to, or later published edition is
27 approved by the department within 90 days of the publication of
28 the performance standard by ASME/ANSI or ASTM, respectively.
29 Notwithstanding any other law, the department may implement,
30 interpret, or make specific the provisions of this section by means
31 of a policy letter or similar instruction and this action by the
32 department shall not be subject to the rulemaking requirements of
33 the Administrative Procedure Act (Chapter 3.5 (commencing with
34 Section 11340) of Part 1 of Division 3 of Title 2 of the Government
35 Code).

36 (c) Subject to subdivision (f), every public swimming pool shall
37 be equipped with antientrapment devices or systems that comply
38 with ASME/ANSI performance standard A112.19.8, as in effect
39 December 31, 2009, or any applicable ASME/ANSI performance

1 standard that has been adopted by the department pursuant to
2 subdivision (b).

3 (d) Subject to subdivisions (e) and (f), every public swimming
4 pool with a single main drain that is not an unblockable drain shall
5 be equipped with at least one or more of the following devices or
6 systems that are designed to prevent physical entrapment by pool
7 drains:

8 (1) A safety vacuum release system that has been tested by a
9 department-approved independent third party and found to conform
10 to ASME/ANSI performance standard A112.19.17, as in effect on
11 December 31, 2009, or any applicable ASME/ANSI performance
12 standard that has been adopted by the department pursuant to
13 subdivision (b), or ASTM performance standard F2387, as in effect
14 on December 31, 2009, or any applicable ASTM performance
15 standard that has been adopted by the department pursuant to
16 subdivision (b).

17 (2) A suction-limiting vent system with a tamper-resistant
18 atmospheric opening, provided that it conforms to any applicable
19 ASME/ANSI or ASTM performance standard that has been
20 adopted by the department pursuant to subdivision (b).

21 (3) A gravity drainage system that utilizes a collector tank,
22 provided that it conforms to any applicable ASME/ANSI or ASTM
23 performance standard that has been adopted by the department
24 pursuant to subdivision (b).

25 (4) An automatic pump shut-off system tested by a
26 department-approved independent third party and found to conform
27 to any applicable ASME/ANSI or ASTM performance standard
28 that has been adopted by the department pursuant to subdivision
29 (b).

30 (5) Any other system that is deemed, in accordance with federal
31 law, to be equally effective as, or more effective than, the systems
32 described in paragraphs (1) to (4), inclusive, at preventing or
33 eliminating the risk of injury or death associated with pool drainage
34 systems.

35 (e) Every public swimming pool constructed on or after January
36 1, 2010, shall have at least two main drains per pump that are
37 hydraulically balanced and symmetrically plumbed through one
38 or more “T” fittings, and that are separated by a distance of at least
39 three feet in any dimension between the drains. A public swimming
40 pool constructed on or after January 1, 2010, that meets the

1 requirements of this subdivision, shall be exempt from the
2 requirements of subdivision (d).

3 (f) A public swimming pool constructed prior to January 1,
4 2010, shall be retrofitted to comply with subdivisions (c) and (d)
5 by no later than July 1, 2010, except that no further retrofitting is
6 required for a public swimming pool that completed a retrofit
7 between December 19, 2007, and January 1, 2010, that complied
8 with the Virginia Graeme Baker Pool and Spa Safety Act (15
9 U.S.C. Sec. 8001 et seq.) as in effect on the date of issue of the
10 construction permit, or for a nonportable wading pool that
11 completed a retrofit prior to January 1, 2010, that complied with
12 state law on the date of issue of the construction permit. A public
13 swimming pool owner who meets the exception described in this
14 subdivision shall do one of the following prior to September 30,
15 2010:

16 (1) File the form issued by the department pursuant to
17 subdivision (g), as otherwise provided in subdivision (i).

18 (2) (A) File a signed statement attesting that the required work
19 has been completed.

20 (B) Provide a document containing the name and license number
21 of the qualified individual who completed the required work.

22 (C) Provide either a copy of the final building permit, if required
23 by the local agency, or a copy of one of the following documents
24 if no permit was required:

25 (i) A document that describes the modification in a manner that
26 provides sufficient information to document the work that was
27 done to comply with federal law.

28 (ii) A copy of the final paid invoice. The amount paid for the
29 services may be omitted or redacted from the final invoice prior
30 to submission.

31 (g) Prior to March 31, 2010, the department shall issue a form
32 for use by an owner of a public swimming pool to indicate
33 compliance with this section. The department shall consult with
34 county health officers and directors of departments of
35 environmental health in developing the form and shall post the
36 form on the department's Internet Web site. The form shall be
37 completed by the owner of a public swimming pool prior to filing
38 the form with the appropriate city, county, or city and county
39 department of environmental health. The form shall include, but
40 not be limited to, the following information:

1 (1) A statement of whether the pool operates with a single or
2 split main drain.

3 (2) Identification of the type of antientrapment devices or
4 systems that have been installed pursuant to subdivision (c) and
5 the date or dates of installation.

6 (3) Identification of the type of devices or systems designed to
7 prevent physical entrapment that have been installed pursuant to
8 subdivision (d) in a public swimming pool with a single main drain
9 that is not an unblockable drain and the date or dates of installation
10 or the reason why the requirement is not applicable.

11 (4) A signature and license number of a qualified individual
12 who certifies that the factual information provided on the form in
13 response to paragraphs (1) to (3), inclusive, is true to the best of
14 his or her knowledge.

15 (h) A qualified individual who improperly certifies information
16 pursuant to paragraph (4) of subdivision (g) shall be subject to
17 potential disciplinary action at the discretion of the licensing
18 authority.

19 (i) Except as provided in subdivision (f), each public swimming
20 pool owner shall file a completed copy of the form issued by the
21 department pursuant to this section with the city, county, or city
22 and county department of environmental health in the city, county,
23 or city and county in which the swimming pool is located. The
24 form shall be filed within 30 days following the completion of the
25 swimming pool construction or installation required pursuant to
26 this section or, if the construction or installation is completed prior
27 to the date that the department issues the form pursuant to this
28 section, within 30 days of the date that the department issues the
29 form. The public swimming pool owner or operator shall not make
30 a false statement, representation, certification, record, report, or
31 otherwise falsify information that he or she is required to file or
32 maintain pursuant to this section.

33 (j) In enforcing this section, health officers and directors of city,
34 county, or city and county departments of environmental health
35 shall consider documentation filed on or with the form issued
36 pursuant to this section by the owner of a public swimming pool
37 as evidence of compliance with this section. A city, county, or city
38 and county department of environmental health may verify the
39 accuracy of the information filed on or with the form.

1 (k) To the extent that the requirements for public wading pools
2 imposed by Section 116064 conflict with this section, the
3 requirements of this section shall prevail.

4 (l) (1) Until January 1, 2014, the department may assess an
5 annual fee on the owners of each public swimming pool, to be
6 collected by the applicable local health department, in an amount
7 not to exceed the amount necessary to defray the department's
8 costs of carrying out its duties under Section 116064.1 and this
9 section but in no case shall this fee exceed six dollars (\$6).

10 (2) The local health department may retain a portion of the fee
11 collected pursuant to paragraph (1) in an amount necessary to cover
12 the administrative costs of collecting the fee, but in no case to
13 exceed one dollar (\$1).

14 (3) The local health department shall bill the owner of each
15 public swimming pool in its jurisdiction for the amount of the state
16 fee. The local health department shall transmit the collected state
17 fee to the Comptroller for deposit into the Recreational Health Fund,
18 which is hereby created in the State Treasury. The local health
19 department shall not be required to take action to collect an unpaid
20 state fee, but shall submit to the department, every six months, a
21 list containing the name and address of the owner of each public
22 swimming pool who has failed to pay the state fee for more than
23 90 days after the date that the bill was provided to the owner of
24 the public swimming pool.

25 (4) Owners that are exempt from local swimming pool permit
26 fees shall also be exempt from the fees imposed pursuant to this
27 subdivision.

28 (5) Except as provided in paragraph (2), all moneys collected
29 by the department pursuant to this section shall be deposited into
30 the Recreational Health Fund. Notwithstanding Section 16305.7
31 of the Government Code, interest and dividends on moneys in the
32 Recreational Health Fund shall also be deposited in the fund.
33 Moneys in the fund shall, upon appropriation by the Legislature,
34 be available to the department for carrying out its duties under
35 Section 116064.1 and this section and shall not be redirected for
36 any other purpose.

37 SEC. 136. Section 116540 of the Health and Safety Code is
38 amended to read:

39 116540. Following completion of the investigation and
40 satisfaction of the requirements of subdivisions (a) and (b), the

1 department shall issue or deny the permit. The department may
2 impose permit conditions, requirements for system improvements,
3 and time schedules as it deems necessary to ensure a reliable and
4 adequate supply of water at all times that is pure, wholesome,
5 potable, and does not endanger the health of consumers.

6 (a) No public water system that was not in existence on January
7 1, 1998, shall be granted a permit unless the system demonstrates
8 to the department that the water supplier possesses adequate
9 financial, managerial, and technical capability to ensure the
10 delivery of pure, wholesome, and potable drinking water. This
11 section shall also apply to any change of ownership of a public
12 water system that occurs after January 1, 1998.

13 (b) No permit under this chapter shall be issued to an association
14 organized under Title 3 (commencing with Section 18000) of the
15 Corporations Code. This section shall not apply to unincorporated
16 associations that as of December 31, 1990, are holders of a permit
17 issued under this chapter.

18 SEC. 137. Section 124991 of the Health and Safety Code is
19 amended to read:

20 124991. (a) (1) The Birth Defects Monitoring Program, within
21 the State Department of Public Health, shall collect and store any
22 umbilical cord blood samples it receives from hospitals for storage
23 and research. For purposes of ensuring financial stability, the Birth
24 Defects Monitoring Program shall ensure that the following
25 conditions, alone or in combination, are met:

26 (A) The fees paid by researchers pursuant to subdivision (c)
27 shall be used for, and be sufficient to cover the cost of, collecting
28 and storing blood samples, including umbilical cord blood samples.

29 (B) The department receives confirmation that a researcher has
30 requested umbilical cord blood samples from the Birth Defects
31 Monitoring Program for research or has requested umbilical cord
32 blood samples to be included within a request for pregnancy or
33 newborn blood samples through the program and has provided
34 satisfactory evidence that adequate funding will be provided to
35 the department from the fees paid by the researcher for the request.

36 (C) The department receives federal grant moneys to pay for
37 initial startup costs for the collection and storage of umbilical cord
38 blood samples.

39 (2) The department may limit the number of umbilical cord
40 blood samples the program collects each year.

1 (b) (1) All information relating to umbilical cord blood samples
2 collected and utilized by the department shall be confidential, and
3 shall be used solely for the purposes of the program, or, if approved
4 by the department, research. Access to confidential information
5 shall be limited to authorized persons who agree, in writing, to
6 maintain the confidentiality of that information. Notwithstanding
7 any other provision of law, when the blood samples specified in
8 subdivision (c), including those samples with any information
9 identifying the person from whom the samples were obtained, are
10 stored, processed, analyzed, or otherwise shared for research
11 purposes with nondepartment staff, those samples may be shared
12 by the program with department-authorized researchers for research
13 purposes, and department representatives approved by the
14 department, subject to the confidentiality and security requirements
15 for confidential information established in this section and in
16 Section 103850.

17 (2) The department shall maintain an accurate record of all
18 persons who are given confidential information pursuant to this
19 section, and any disclosure of confidential information shall be
20 made only upon written agreement that the information will be
21 kept confidential, used for its approved purpose, and not be further
22 disclosed.

23 (3) A person who, in violation of a written agreement to maintain
24 confidentiality, discloses information provided pursuant to this
25 section, or who uses information provided pursuant to this section
26 in a manner other than as approved pursuant to this section may
27 be denied further access to confidential information maintained
28 by the department, and shall be subject to a civil penalty not
29 exceeding one thousand dollars (\$1,000). The penalty provided in
30 this section does not limit or otherwise restrict a remedy,
31 provisional or otherwise, provided by law for the benefit of the
32 department or a person covered by this section.

33 (c) In order to implement this section, the department shall
34 establish fees in an amount that shall not exceed the costs of
35 administering the program and the collection and storage of these
36 samples, which the department shall collect from researchers who
37 have been approved by the department and who seek to use the
38 following types of blood samples for research:

39 (1) Umbilical cord blood.

(2) Pregnancy blood collected by the Genetic Disease Screening Program, and stored by the Birth Defects Monitoring Program.

(3) Newborn blood collected by the Genetic Disease Screening Program.

(d) Fees collected pursuant to subdivision (c) shall be collected by the department and deposited into the Birth Defects Monitoring Program Fund, the Genetic Disease Testing Fund, created pursuant to Section 124996, or the Cord Blood Banking Fund, which is hereby created as a special fund in the State Treasury. The amount of fees deposited into each of these funds shall be based on the program that is providing those pregnancy blood samples, and the purpose for which the blood sample was obtained. Notwithstanding any other provision of law, the moneys in the Birth Defects Monitoring Program Fund, the Genetic Disease Testing Fund, and the Cord Blood Banking Fund that are collected pursuant to subdivision (c), may be used by the department, upon appropriation by the Legislature, for the purposes specified in subdivision (e).

(e) Moneys in those funds shall be used for the costs related to data management, including data linkage and entry, and blood collection, storage, retrieval, processing, inventory, and shipping.

(f) The department shall comply with the existing requirements in the Birth Defects Monitoring Program, as set forth in Chapter 1 (commencing with Section 103825) of Part 2 of Division 102.

(g) The department, any entities approved by the department, and researchers shall maintain the confidentiality of patient information and blood samples in accordance with existing law and in the same manner as other medical record information with patient identification that they possess, and shall use the information only for the following purposes:

(1) Research to identify risk factors for children's and women's diseases.

(2) Research to develop and evaluate screening tests.

(3) Research to develop and evaluate prevention strategies.

(4) Research to develop and evaluate treatments.

(h) (1) For purposes of ensuring the security of a donor's personal information, before any blood samples are released pursuant to this section for research purposes, the State Committee for the Protection of Human Subjects (CPHS) shall determine if all of the following criteria have been met:

1 (A) The department, contractors, researchers, or other entities
2 approved by the department have provided a plan sufficient to
3 protect personal information from improper use and disclosures,
4 including sufficient administrative, physical, and technical
5 safeguards to protect personal information from reasonable
6 anticipated threats to the security or confidentiality of the
7 information.

8 (B) The department, contractors, researchers, or other entities
9 approved by the department have provided a sufficient plan to
10 destroy or return all personal information as soon as it is no longer
11 needed for the research activity, unless the program contractors,
12 researchers, or other entities approved by the department have
13 demonstrated an ongoing need for the personal information for
14 the research activity and have provided a long-term plan sufficient
15 to protect the confidentiality of that information.

16 (C) The department, contractors, researchers, or other entities
17 approved by the department have provided sufficient written
18 assurances that the personal information will not be reused or
19 disclosed to a person or entity, or used in a manner not approved
20 in the research protocol, except as required by law or for authorized
21 oversight of the research activity.

22 (2) As part of its review and approval of the research activity
23 for the purpose of protecting personal information held in agency
24 databases, CPHS shall accomplish at least all of the following:

25 (A) Determine whether the requested personal information is
26 needed to conduct the research.

27 (B) Permit access to personal information only if it is needed
28 for the research activity.

29 (C) Permit access only to the minimum personal information
30 necessary for the research activity.

31 (D) Require the assignment of unique subject codes that are not
32 derived from personal information in lieu of social security
33 numbers if the research can be conducted without social security
34 numbers.

35 (E) If feasible, and if cost, time, and technical expertise permit,
36 require the agency to conduct a portion of the data processing for
37 the researcher to minimize the release of personal information.

38 (i) In addition to the fees described in subdivision (c), the
39 department may bill a researcher for the costs associated with the
40 department's process of protecting personal information, including,

1 but not limited to, the department's costs for conducting a portion
2 of the data processing for the researcher, removing personal
3 information, encrypting or otherwise securing personal information,
4 or assigning subject codes.

5 (j) This section does not prohibit the department from using its
6 existing authority to enter into written agreements to enable other
7 institutional review boards to approve research activities, projects
8 or classes of projects for the department, provided that the data
9 security requirements set forth in this section are satisfied.

10 SEC. 138. Section 128730 of the Health and Safety Code is
11 amended to read:

12 128730. (a) Effective January 1, 1986, the office shall be the
13 single state agency designated to collect the following health
14 facility or clinic data for use by all state agencies:

15 (1) That data required by the office pursuant to Section 127285.

16 (2) That data required in the Medi-Cal cost reports pursuant to
17 Section 14170 of the Welfare and Institutions Code.

18 (3) Those data items formerly required by the California Health
19 Facilities Commission that are listed in Sections 128735 and
20 128740. Information collected pursuant to subdivision (g) of
21 Section 128735 and Sections 128736 and 128737 shall be made
22 available to the State Department of Health Care Services and the
23 State Department of Public Health. The departments shall ensure
24 that the patient's rights to confidentiality shall not be violated in
25 any manner. The departments shall comply with all applicable
26 policies and requirements involving review and oversight by the
27 State Committee for the Protection of Human Subjects.

28 (b) The office shall consolidate any and all of the reports listed
29 under this section or Sections 128735 and 128740, to the extent
30 feasible, to minimize the reporting burdens on hospitals, provided,
31 however, that the office shall neither add nor delete data items
32 from the Hospital Discharge Abstract Data Record or the quarterly
33 reports without prior authorizing legislation, unless specifically
34 required by federal law or regulation or judicial decision.

35 SEC. 139. Section 130060 of the Health and Safety Code is
36 amended to read:

37 130060. (a) (1) After January 1, 2008, any general acute care
38 hospital building that is determined to be a potential risk of collapse
39 or pose significant loss of life shall only be used for nonacute care
40 hospital purposes. A delay in this deadline may be granted by the

1 office upon a demonstration by the owner that compliance will
2 result in a loss of health care capacity that may not be provided
3 by other general acute care hospitals within a reasonable proximity.
4 In its request for an extension of the deadline, a hospital shall state
5 why the hospital is unable to comply with the January 1, 2008,
6 deadline requirement.

7 (2) Prior to granting an extension of the January 1, 2008,
8 deadline pursuant to this section, the office shall do all of the
9 following:

10 (A) Provide public notice of a hospital's request for an extension
11 of the deadline. The notice, at a minimum, shall be posted on the
12 office's Internet Web site, and shall include the facility's name
13 and identification number, the status of the request, and the
14 beginning and ending dates of the comment period, and shall advise
15 the public of the opportunity to submit public comments pursuant
16 to subparagraph (C). The office shall also provide notice of all
17 requests for the deadline extension directly to interested parties
18 upon request of the interested parties.

19 (B) Provide copies of extension requests to interested parties
20 within 10 working days to allow interested parties to review and
21 provide comment within the 45-day comment period. The copies
22 shall include those records that are available to the public pursuant
23 to the California Public Records Act (Chapter 3.5 (commencing
24 with Section 6250) of Division 7 of Title 1 of the Government
25 Code).

26 (C) Allow the public to submit written comments on the
27 extension proposal for a period of not less than 45 days from the
28 date of the public notice.

29 (b) (1) It is the intent of the Legislature, in enacting this
30 subdivision, to facilitate the process of having more hospital
31 buildings in substantial compliance with this chapter and to take
32 nonconforming general acute care hospital inpatient buildings out
33 of service more quickly.

34 (2) The functional contiguous grouping of hospital buildings of
35 a general acute care hospital, each of which provides, as the
36 primary source, one or more of the hospital's eight basic services
37 as specified in subdivision (a) of Section 1250, may receive a
38 five-year extension of the January 1, 2008, deadline specified in
39 subdivision (a) of this section pursuant to this subdivision for both
40 structural and nonstructural requirements. A functional contiguous

1 grouping refers to buildings containing one or more basic hospital
2 services that are either attached or connected in a way that is
3 acceptable to the State Department of Health Care Services. These
4 buildings may be either on the existing site or a new site.

5 (3) To receive the five-year extension, a single building
6 containing all of the basic services or at least one building within
7 the contiguous grouping of hospital buildings shall have obtained
8 a building permit prior to 1973 and this building shall be evaluated
9 and classified as a nonconforming, Structural Performance
10 Category-1 (SPC-1) building. The classification shall be submitted
11 to and accepted by the Office of Statewide Health Planning and
12 Development. The identified hospital building shall be exempt
13 from the requirement in subdivision (a) until January 1, 2013, if
14 the hospital agrees that the basic service or services that were
15 provided in that building shall be provided, on or before January
16 1, 2013, as follows:

17 (A) Moved into an existing conforming Structural Performance
18 Category-3 (SPC-3), Structural Performance Category-4 (SPC-4),
19 or Structural Performance Category-5 (SPC-5) and Non-Structural
20 Performance Category-4 (NPC-4) or Non-Structural Performance
21 Category-5 (NPC-5) building.

22 (B) Relocated to a newly built compliant SPC-5 and NPC-4 or
23 NPC-5 building.

24 (C) Continued in the building if the building is retrofitted to a
25 SPC-5 and NPC-4 or NPC-5 building.

26 (4) A five-year extension is also provided to a post-1973
27 building if the hospital owner informs the Office of Statewide
28 Health Planning and Development that the building is classified
29 as SPC-1, SPC-3, or SPC-4 and will be closed to general acute
30 care inpatient service use by January 1, 2013. The basic services
31 in the building shall be relocated into a SPC-5 and NPC-4 or NPC-5
32 building by January 1, 2013.

33 (5) SPC-1 buildings, other than the building identified in
34 paragraph (3) or (4), in the contiguous grouping of hospital
35 buildings shall also be exempt from the requirement in subdivision
36 (a) until January 1, 2013. However, on or before January 1, 2013,
37 at a minimum, each of these buildings shall be retrofitted to a
38 SPC-2 and NPC-3 building, or no longer be used for general acute
39 care hospital inpatient services.

1 (c) On or before March 1, 2001, the office shall establish a
2 schedule of interim work progress deadlines that hospitals shall
3 be required to meet to be eligible for the extension specified in
4 subdivision (b). To receive this extension, the hospital building or
5 buildings shall meet the year 2002 nonstructural requirements.

6 (d) A hospital building that is eligible for an extension pursuant
7 to this section shall meet the January 1, 2030, nonstructural and
8 structural deadline requirements if the building is to be used for
9 general acute care inpatient services after January 1, 2030.

10 (e) Upon compliance with subdivision (b), the hospital shall be
11 issued a written notice of compliance by the office. The office
12 shall send a written notice of violation to hospital owners that fail
13 to comply with this section. The office shall make copies of these
14 notices available on its Internet Web site.

15 (f) (1) A hospital that has received an extension of the January
16 1, 2008, deadline pursuant to subdivision (a) or (b) may request
17 an additional extension of up to two years for a hospital building
18 that it owns or operates and that meets the criteria specified in
19 paragraph (2), (3), or (5).

20 (2) The office may grant the additional extension if the hospital
21 building subject to the extension meets all of the following criteria:

22 (A) The hospital building is under construction at the time of
23 the request for extension under this subdivision and the purpose
24 of the construction is to meet the requirements of subdivision (a)
25 to allow the use of the building as a general acute care hospital
26 building after the extension deadline granted by the office pursuant
27 to subdivision (a) or (b).

28 (B) The hospital building plans were submitted to the office
29 and were deemed ready for review by the office at least four years
30 prior to the applicable deadline for the building. The hospital shall
31 indicate, upon submission of its plans, the SPC-1 building or
32 buildings that will be retrofitted or replaced to meet the
33 requirements of this section as a result of the project.

34 (C) The hospital received a building permit for the construction
35 described in subparagraph (A) at least two years prior to the
36 applicable deadline for the building.

37 (D) The hospital submitted a construction timeline at least two
38 years prior to the applicable deadline for the building demonstrating
39 the hospital's intent to meet the applicable deadline. The timeline
40 shall include all of the following:

1 (i) The projected construction start date.

2 (ii) The projected construction completion date.

3 (iii) Identification of the contractor.

4 (E) The hospital is making reasonable progress toward meeting
5 the timeline set forth in subparagraph (D), but factors beyond the
6 hospital's control make it impossible for the hospital to meet the
7 deadline.

8 (3) The office may grant the additional extension if the hospital
9 building subject to the extension meets all of the following criteria:

10 (A) The hospital building is owned by a health care district that
11 has, as owner, received the extension of the January 1, 2008,
12 deadline, but where the hospital is operated by an unaffiliated
13 third-party lessee pursuant to a facility lease that extends at least
14 through December 31, 2009. The district shall file a declaration
15 with the office with a request for an extension stating that, as of
16 the date of the filing, the district has lacked, and continues to lack,
17 unrestricted access to the subject hospital building for seismic
18 planning purposes during the term of the lease, and that the district
19 is under contract with the county to maintain hospital services
20 when the hospital comes under district control. The office shall
21 not grant the extension if an unaffiliated third-party lessee will
22 operate the hospital beyond December 31, 2010.

23 (B) The hospital building plans were submitted to the office
24 and were deemed ready for review by the office at least four years
25 prior to the applicable deadline for the building. The hospital shall
26 indicate, upon submission of its plans, the SPC-1 building or
27 buildings that will be retrofitted or replaced to meet the
28 requirements of this section as a result of the project.

29 (C) The hospital received a building permit for the construction
30 described in subparagraph (B) by December 31, 2011.

31 (D) The hospital submitted, by December 31, 2011, a
32 construction timeline for the building demonstrating the hospital's
33 intent and ability to meet the deadline of December 31, 2014. The
34 timeline shall include all of the following:

35 (i) The projected construction start date.

36 (ii) The projected construction completion date.

37 (iii) Identification of the contractor.

38 (E) The hospital building is under construction at the time of
39 the request for the extension, the purpose of the construction is to
40 meet the requirements of subdivision (a) to allow the use of the

1 building as a general acute care hospital building after the extension
2 deadline granted by the office pursuant to subdivision (a) or (b),
3 and the hospital is making reasonable progress toward meeting
4 the timeline set forth in subparagraph (D).

5 (F) The hospital granted an extension pursuant to this paragraph
6 shall submit an additional status report to the office, equivalent to
7 that required by subdivision (c) of Section 130061, no later than
8 June 30, 2013.

9 (4) An extension granted pursuant to paragraph (3) shall be
10 applicable only to the health care district applicant and its affiliated
11 hospital while the hospital is operated by the district or an entity
12 under the control of the district.

13 (5) The office may grant the additional extension if the hospital
14 building subject to the extension meets all of the following criteria:

15 (A) The hospital owner submitted to the office, prior to June
16 30, 2009, a request for review using current computer modeling
17 utilized by the office and based upon software developed by the
18 Federal Emergency Management Agency, referred to as Hazards
19 US, and the building was deemed SPC-1 after that review.

20 (B) The hospital building plans for the building are submitted
21 to the office and deemed ready for review by the office prior to
22 July 1, 2010. The hospital shall indicate, upon submission of its
23 plans, the SPC-1 building or buildings that shall be retrofitted or
24 replaced to meet the requirements of this section as a result of the
25 project.

26 (C) The hospital receives a building permit from the office for
27 the construction described in subparagraph (B) prior to January 1,
28 2012.

29 (D) The hospital submits, prior to January 1, 2012, a
30 construction timeline for the building demonstrating the hospital's
31 intent and ability to meet the applicable deadline. The timeline
32 shall include all of the following:

33 (i) The projected construction start date.

34 (ii) The projected construction completion date.

35 (iii) Identification of the contractor.

36 (E) The hospital building is under construction at the time of
37 the request for the extension, the purpose of the construction is to
38 meet the requirements of subdivision (a) to allow the use of the
39 building as a general acute care hospital building after the extension
40 deadline granted by the office pursuant to subdivision (a) or (b),

1 and the hospital is making reasonable progress toward meeting
2 the timeline set forth in subparagraph (D).

3 (F) The hospital owner completes construction such that the
4 hospital meets all criteria to enable the office to issue a certificate
5 of occupancy by the applicable deadline for the building.

6 (6) A hospital denied an extension pursuant to this subdivision
7 may appeal the denial to the Hospital Building Safety Board.

8 (7) The office may revoke an extension granted pursuant to this
9 subdivision for any hospital building where the work of
10 construction is abandoned or suspended for a period of at least one
11 year, unless the hospital demonstrates in a public document that
12 the abandonment or suspension was caused by factors beyond its
13 control.

14 SEC. 140. Section 130251 of the Health and Safety Code is
15 amended to read:

16 130251. (a) The California Health and Human Services Agency
17 or one of the departments under its jurisdiction may apply for
18 federal funds made available through the federal American
19 Recovery and Reinvestment Act of 2009 (P.L. 111-5) for health
20 information technology and exchange.

21 (b) In the event that the California Health and Human Services
22 Agency or one of the departments under its jurisdiction elects not
23 to submit an application described in subdivision (a), the Governor
24 shall designate a qualified nonprofit entity to be the
25 state-designated entity for the purposes of health information
26 exchange, pursuant to the requirements set forth in ARRA.

27 (c) The agency or state-designated entity shall execute tasks
28 related to accessing federal stimulus funds made available through
29 ARRA, and facilitate and expand the use and disclosure of health
30 information electronically among organizations according to
31 nationally recognized standards and implementation specifications
32 while protecting, to the greatest extent possible, individual privacy
33 and the confidentiality of electronic medical records.

34 (d) The agency or state-designated entity shall develop a plan
35 to ensure that health information exchange capabilities are
36 available, adopted, and utilized statewide so that patients do not
37 experience disparities in access to the benefits of this technology
38 by age, race, ethnicity, language, income, insurance status,
39 geography, or otherwise.

(e) The agency or state-designated entity shall create a plan for a self-sustaining funding mechanism that does not include use of General Fund moneys that shall cover all reasonable costs of the administration of health information exchange when federal ARRA funds expire or are exhausted.

(f) The state-designated entity shall continually meet any conditions for being so designated as determined by the Secretary of California Health and Human Services. Failure to comply with this subdivision may result in the entity losing its designation.

(g) As a condition of receiving the state designation, the state-designated entity shall comply with all of the following requirements:

(1) It shall be subject to oversight by the California Health and Human Services Agency.

(2) (A) It shall be governed by a board with a diverse composition from multiple types of organizations from multiple regions throughout the state. The governing board shall include, at a minimum, all of the following:

(i) The Secretary of California Health and Human Services or his or her designee.

(ii) The Chairperson of the Senate Committee on Health or his or her designee.

(iii) The Chairperson of the Assembly Committee on Health or his or her designee.

(iv) At least two consumer representatives, one of whom shall have expertise in privacy and security of health information.

(B) The majority of the board shall be comprised of nongovernmental employees.

(3) If the board convenes workgroups or subcommittees, the workgroups or subcommittees shall be comprised of representatives from multiple types of organizations from multiple regions throughout the state, and meetings of any workgroup or subcommittee shall be held in an open, public, and transparent way.

(4) It shall have nondiscrimination and conflict-of-interest policies that demonstrate a commitment to open, fair, and nondiscriminatory participation by stakeholders.

(h) The state-designated entity shall report to the California Health and Human Services Agency and the Legislature on its progress and activities at least annually.

1 SEC. 141. Section 38.5 of the Insurance Code is amended to
2 read:

3 38.5. Any written notice required to be given or mailed to any
4 person by an insurer relating to any insurance on risks or on
5 operations in this state not excepted by Section 1851 from the
6 coverage of Chapter 9 (commencing with Section 1850.4) of Part
7 2 of Division 1 of this code may, if not excluded by subdivision
8 (b) or (c) of Section 1633.3 of the Civil Code, be provided by
9 electronic transmission pursuant to Title 2.5 (commencing with
10 Section 1633.1) of Part 2 of Division 3 of the Civil Code, if each
11 party has agreed to conduct the transaction by electronic means
12 pursuant to Section 1633.5 of the Civil Code. The affidavit of the
13 person who initiated the electronic transmission, stating the facts
14 of that transmission into an information processing system outside
15 of the control of the sender or of any person that sent the electronic
16 record on behalf of the sender, is prima facie evidence that the
17 notice was transmitted and shall be sufficient proof of notice. Any
18 notice provided by electronic transmission shall be treated as if
19 mailed or given for the purposes of any provision of this code,
20 except as provided by subdivision (g) of Section 1633.15 of the
21 Civil Code. The insurance company shall maintain a system for
22 confirming that any notice or document that is to be provided by
23 electronic means has been sent in a manner consistent with Section
24 1633.15 of the Civil Code. A valid electronic signature shall be
25 sufficient for any provision of law requiring a written signature.
26 The insurance company shall retain a copy of the confirmation
27 and electronic signature, when either is required, with the policy
28 information so that they are retrievable upon request by the
29 Department of Insurance while the policy is in force and for five
30 years thereafter.

31 SEC. 142. Section 1063.1 of the Insurance Code is amended
32 to read:

33 1063.1. As used in this article:

34 (a) "Member insurer" means an insurer required to be a member
35 of the association in accordance with subdivision (a) of Section
36 1063, except and to the extent that the insurer is participating in
37 an insolvency program adopted by the United States government.

38 (b) "Insolvent insurer" means an insurer that was a member
39 insurer of the association, consistent with paragraph (11) of
40 subdivision (c), either at the time the policy was issued or when

1 the insured event occurred, and against which an order of
2 liquidation or receivership with a finding of insolvency has been
3 entered by a court of competent jurisdiction, or, in the case of the
4 State Compensation Insurance Fund, if a finding of insolvency is
5 made by a duly enacted legislative measure.

6 (c) (1) “Covered claims” means the obligations of an insolvent
7 insurer, including the obligation for unearned premiums, that satisfy
8 all of the following requirements:

9 (A) Imposed by law and within the coverage of an insurance
10 policy of the insolvent insurer.

11 (B) Which were unpaid by the insolvent insurer.

12 (C) Which are presented as a claim to the liquidator in this state
13 or to the association on or before the last date fixed for the filing
14 of claims in the domiciliary liquidating proceedings.

15 (D) Which were incurred prior to the date coverage under the
16 policy terminated and prior to, on, or within 30 days after the date
17 the liquidator was appointed.

18 (E) For which the assets of the insolvent insurer are insufficient
19 to discharge in full.

20 (F) In the case of a policy of workers’ compensation insurance,
21 to provide workers’ compensation benefits under the workers’
22 compensation law of this state.

23 (G) In the case of other classes of insurance if the claimant or
24 insured is a resident of this state at the time of the insured
25 occurrence, or the property from which the claim arises is
26 permanently located in this state.

27 (2) “Covered claims” also includes the obligations assumed by
28 an assuming insurer from a ceding insurer where the assuming
29 insurer subsequently becomes an insolvent insurer if, at the time
30 of the insolvency of the assuming insurer, the ceding insurer is no
31 longer admitted to transact business in this state. Both the assuming
32 insurer and the ceding insurer shall have been member insurers at
33 the time the assumption was made. “Covered claims” under this
34 paragraph shall be required to satisfy the requirements of
35 subparagraphs (A) to (G), inclusive, of paragraph (1), except for
36 the requirement that the claims be against policies of the insolvent
37 insurer. The association shall have a right to recover any deposit,
38 bond, or other assets that may have been required to be posted by
39 the ceding company to the extent of covered claim payments and

1 shall be subrogated to any rights the policyholders may have
2 against the ceding insurer.

3 (3) “Covered claims” does not include obligations arising from
4 the following:

5 (A) Life, annuity, health, or disability insurance.

6 (B) Mortgage guaranty, financial guaranty, or other forms of
7 insurance offering protection against investment risks.

8 (C) Fidelity or surety insurance including fidelity or surety
9 bonds, or any other bonding obligations.

10 (D) Credit insurance.

11 (E) Title insurance.

12 (F) Ocean marine insurance or ocean marine coverage under
13 any insurance policy including claims arising from the following:
14 the Jones Act (46 U.S.C. Sec. 688), the Longshore and Harbor
15 Workers’ Compensation Act (33 U.S.C. Sec. 901 et seq.), or any
16 other similar federal statutory enactment, or any endorsement or
17 policy affording protection and indemnity coverage.

18 (G) Any claims servicing agreement or insurance policy
19 providing retroactive insurance of a known loss or losses, except
20 a special excess workers’ compensation policy issued pursuant to
21 subdivision (c) of Section 3702.8 of the Labor Code that covers
22 all or any part of workers’ compensation liabilities of an employer
23 that is issued, or was previously issued, a certificate of consent to
24 self-insure pursuant to subdivision (b) of Section 3700 of the Labor
25 Code.

26 (4) “Covered claims” does not include any obligations of the
27 insolvent insurer arising out of any reinsurance contracts, nor any
28 obligations incurred after the expiration date of the insurance policy
29 or after the insurance policy has been replaced by the insured or
30 canceled at the insured’s request, or after the insurance policy has
31 been canceled by the liquidator, nor any obligations to any state
32 or to the federal government.

33 (5) “Covered claims” does not include any obligations to
34 insurers, insurance pools, or underwriting associations, nor their
35 claims for contribution, indemnity, or subrogation, equitable or
36 otherwise, except as otherwise provided in this chapter.

37 An insurer, insurance pool, or underwriting association may not
38 maintain, in its own name or in the name of its insured, any claim
39 or legal action against the insured of the insolvent insurer for
40 contribution, indemnity or by way of subrogation, except insofar

1 as, and to the extent only, that the claim exceeds the policy limits
2 of the insolvent insurer's policy. In those claims or legal actions,
3 the insured of the insolvent insurer is entitled to a credit or setoff
4 in the amount of the policy limits of the insolvent insurer's policy,
5 or in the amount of the limits remaining, where those limits have
6 been diminished by the payment of other claims.

7 (6) "Covered claims," except in cases involving a claim for
8 workers' compensation benefits or for unearned premiums, does
9 not include any claim in an amount of one hundred dollars (\$100)
10 or less, nor that portion of any claim that is in excess of any
11 applicable limits provided in the insurance policy issued by the
12 insolvent insurer.

13 (7) "Covered claims" does not include that portion of any claim,
14 other than a claim for workers' compensation benefits, that is in
15 excess of five hundred thousand dollars (\$500,000).

16 (8) "Covered claims" does not include any amount awarded as
17 punitive or exemplary damages, nor any amount awarded by the
18 Workers' Compensation Appeals Board pursuant to Section 5814
19 or 5814.5 of the Labor Code because payment of compensation
20 was unreasonably delayed or refused by the insolvent insurer.

21 (9) "Covered claims" does not include (A) any claim to the
22 extent it is covered by any other insurance of a class covered by
23 this article available to the claimant or insured or (B) any claim
24 by any person other than the original claimant under the insurance
25 policy in his or her own name, his or her assignee as the person
26 entitled thereto under a premium finance agreement as defined in
27 Section 673 and entered into prior to insolvency, his or her
28 executor, administrator, guardian, or other personal representative
29 or trustee in bankruptcy, and does not include any claim asserted
30 by an assignee or one claiming by right of subrogation, except as
31 otherwise provided in this chapter.

32 (10) "Covered claims" does not include any obligations arising
33 out of the issuance of an insurance policy written by the separate
34 division of the State Compensation Insurance Fund pursuant to
35 Sections 11802 and 11803.

36 (11) "Covered claims" does not include any obligations of the
37 insolvent insurer arising from any policy or contract of insurance
38 issued or renewed prior to the insolvent insurer's admission to
39 transact insurance in the State of California.

1 (12) “Covered claims” does not include surplus deposits of
2 subscribers as defined in Section 1374.1.

3 (13) “Covered claims” shall also include obligations arising
4 under an insurance policy written to indemnify a permissibly
5 self-insured employer pursuant to subdivision (b) or (c) of Section
6 3700 of the Labor Code for its liability to pay workers’
7 compensation benefits in excess of a specific or aggregate retention,
8 provided, however, that for purposes of this article, those claims
9 shall not be considered workers’ compensation claims and therefore
10 are subject to the per claim limit in paragraph (7) and any payments
11 and expenses related thereto shall be allocated to category (c) for
12 claims other than workers’ compensation, homeowners, and
13 automobile, as provided in Section 1063.5.

14 These provisions shall apply to obligations arising under any
15 policy as described herein issued to a permissibly self-insured
16 employer or group of self-insured employers pursuant to Section
17 3700 of the Labor Code and notwithstanding any other provision
18 of this code, those obligations shall be governed by this provision
19 in the event that the Self-Insurers’ Security Fund is ordered to
20 assume the liabilities of a permissibly self-insured employer or
21 group of self-insured employers pursuant to Section 3701.5 of the
22 Labor Code. The provisions of this paragraph apply only to
23 insurance policies written to indemnify a permissibly self-insured
24 employer or group of self-insured employers under subdivision
25 (b) or (c) of Section 3700 of the Labor Code, for its liability to pay
26 workers’ compensation benefits in excess of a specific or aggregate
27 retention, and this paragraph does not apply to special excess
28 workers’ compensation insurance policies unless issued pursuant
29 to authority granted in subdivision (c) of Section 3702.8 of the
30 Labor Code, and as provided for in subparagraph (G) of paragraph
31 (3). In addition, this paragraph does not apply to any claims
32 servicing agreement or insurance policy providing retroactive
33 insurance of a known loss or losses as are excluded in subparagraph
34 (G) of paragraph (3).

35 Each permissibly self-insured employer or group of self-insured
36 employers, or the Self-Insurers’ Security Fund, shall, to the extent
37 required by the Labor Code, be responsible for paying, adjusting,
38 and defending each claim arising under policies of insurance
39 covered under this section, unless the benefits paid on a claim
40 exceed the specific or aggregate retention, in which case:

1 (A) If the benefits paid on the claim exceed the specific or
2 aggregate retention, and the policy requires the insurer to defend
3 and adjust the claim, the California Insurance Guarantee
4 Association (CIGA) shall be solely responsible for adjusting and
5 defending the claim, and shall make all payments due under the
6 claim, subject to the limitations and exclusions of this article with
7 regard to covered claims. As to each claim subject to this
8 paragraph, notwithstanding any other provisions of this code or
9 the Labor Code, and regardless of whether the amount paid by
10 CIGA is adequate to discharge a claim obligation, neither the
11 self-insured employer, group of self-insured employers, nor the
12 Self-Insurers' Security Fund, shall have any obligation to pay
13 benefits over and above the specific or aggregate retention, except
14 as provided in this subdivision.

15 (B) If the benefits paid on the claim exceed the specific or
16 aggregate retention, and the policy does not require the insurer to
17 defend and adjust the claim, the permissibly self-insured employer
18 or group of self-insured employers, or the Self-Insurers' Security
19 Fund, shall not have any further payment obligations with respect
20 to the claim, but shall continue defending and adjusting the claim,
21 and shall have the right, but not the obligation, in any proceeding
22 to assert all applicable statutory limitations and exclusions as
23 contained in this article with regard to the covered claim. CIGA
24 shall have the right, but not the obligation, to intervene in any
25 proceeding where the self-insured employer, group of self-insured
26 employers, or the Self-Insurers' Security Fund is defending any
27 such claim and shall be permitted to raise the appropriate statutory
28 limitations and exclusions as contained in this article with respect
29 to covered claims. Regardless of whether the self-insured employer
30 or group of self-insured employers, or the Self-Insurers' Security
31 Fund, asserts the applicable statutory limitations and exclusions,
32 or whether CIGA intervenes in any such proceeding, CIGA shall
33 be solely responsible for paying all benefits due on the claim,
34 subject to the exclusions and limitations of this article with respect
35 to covered claims. As to each claim subject to this paragraph,
36 notwithstanding any other provision of the Insurance Code or the
37 Labor Code and regardless of whether the amount paid by CIGA
38 is adequate to discharge a claim obligation, neither the self-insured
39 employer, group of self-insured employers, nor the Self-Insurers'
40 Security Fund, shall have any obligation to pay benefits over and

1 above the specific or aggregate retention, except as provided in
2 this subdivision.

3 (C) In the event that the benefits paid on the covered claim
4 exceed the per claim limit in paragraph (7), the responsibility for
5 paying, adjusting, and defending the claim shall be returned to the
6 permissibly self-insured employer or group of employers, or the
7 Self-Insurers' Security Fund.

8 These provisions shall apply to all pending and future
9 insolvencies. For purposes of this paragraph, a pending insolvency
10 is one involving a company that is currently receiving benefits
11 from the guarantee association.

12 (d) "Admitted to transact insurance in this state" means an
13 insurer possessing a valid certificate of authority issued by the
14 department.

15 (e) "Affiliate" means a person who directly or indirectly, through
16 one or more intermediaries, controls, is controlled by, or is under
17 common control with an insolvent insurer on December 31 of the
18 year next preceding the date the insurer becomes an insolvent
19 insurer.

20 (f) "Control" means the possession, direct or indirect, of the
21 power to direct or cause the direction of the management and
22 policies of a person, whether through the ownership of voting
23 securities, by contract other than a commercial contract for goods
24 or nonmanagement services, or otherwise, unless the power is the
25 result of an official position with or corporate office held by the
26 person. Control is presumed to exist if any person, directly or
27 indirectly, owns, controls, holds with the power to vote, or holds
28 proxies representing, 10 percent or more of the voting securities
29 of any other person. This presumption may be rebutted by showing
30 that control does not in fact exist.

31 (g) "Claimant" means any insured making a first party claim or
32 any person instituting a liability claim, provided that no person
33 who is an affiliate of the insolvent insurer may be a claimant.

34 (h) "Ocean marine insurance" includes marine insurance as
35 defined in Section 103, except for inland marine insurance, as well
36 as any other form of insurance, regardless of the name, label, or
37 marketing designation of the insurance policy, that insures against
38 maritime perils or risks and other related perils or risks, which are
39 usually insured against by traditional marine insurance such as
40 hull and machinery, marine builders' risks, and marine protection

1 and indemnity. Those perils and risks insured against include,
2 without limitation, loss, damage, or expense or legal liability of
3 the insured arising out of or incident to ownership, operation,
4 chartering, maintenance, use, repair, or construction of any vessel,
5 craft, or instrumentality in use in ocean or inland waterways,
6 including liability of the insured for personal injury, illness, or
7 death for loss or damage to the property of the insured or another
8 person.

9 (i) “Unearned premium” means that portion of a premium as
10 calculated by the liquidator that had not been earned because of
11 the cancellation of the insolvent insurer’s policy and is that
12 premium remaining for the unexpired term of the insolvent
13 insurer’s policy. “Unearned premium” does not include any amount
14 sought as return of a premium under any policy providing
15 retroactive insurance of a known loss or return of a premium under
16 any retrospectively rated policy or a policy subject to a contingent
17 surcharge or any policy in which the final determination of the
18 premium cost is computed after expiration of the policy and is
19 calculated on the basis of actual loss experience during the policy
20 period.

21 SEC. 143. Section 1063.2 of the Insurance Code is amended
22 to read:

23 1063.2. (a) The association shall pay and discharge covered
24 claims and in connection therewith pay for or furnish loss
25 adjustment services and defenses of claimants when required by
26 policy provisions. It may do so either directly by itself or through
27 a servicing facility or through a contract for reinsurance and
28 assumption of liabilities by one or more member insurers or
29 through a contract with the liquidator, upon terms satisfactory to
30 the association and to the liquidator, under which payments on
31 covered claims would be made by the liquidator using funds
32 provided by the association.

33 (b) The association shall be a party in interest in all proceedings
34 involving a covered claim, and shall have the same rights as the
35 insolvent insurer would have had if not in liquidation, including,
36 but not limited to, the right to: (1) appear, defend, and appeal a
37 claim in a court of competent jurisdiction, (2) receive notice of,
38 investigate, adjust, compromise, settle, and pay a covered claim,
39 and (3) investigate, handle, and deny a noncovered claim. The
40 association shall have no cause of action against the insureds of

1 the insolvent insurer for any sums it has paid out, except as
2 provided by this article.

3 (c) (1) If damages against uninsured motorists are recoverable
4 by the claimant from his or her own insurer, the applicable limits
5 of the uninsured motorist coverage shall be a credit against a
6 covered claim payable under this article. Any person having a
7 claim that may be recovered under more than one insurance
8 guaranty association or its equivalent shall seek recovery first from
9 the association of the place of residence of the insured, except that
10 if it is a first-party claim for damage to property with a permanent
11 location, he or she shall seek recovery first from the association
12 of the permanent location of the property, and if it is a workers'
13 compensation claim, he or she shall seek recovery first from the
14 association of the residence of the claimant. Any recovery under
15 this article shall be reduced by the amount of recovery from any
16 other insurance guaranty association or its equivalent. A member
17 insurer may recover in subrogation from the association only
18 one-half of any amount paid by that insurer under uninsured
19 motorist coverage for bodily injury or wrongful death (and nothing
20 for a payment for anything else), in those cases where the injured
21 person insured by such an insurer has proceeded under his or her
22 uninsured motorist coverage on the ground that the tortfeasor is
23 uninsured as a result of the insolvency of his or her liability insurer
24 (an insolvent insurer as defined in this article), provided that the
25 member insurer shall waive all rights of subrogation against the
26 tortfeasor. Any amount paid a claimant in excess of the amount
27 authorized by this section may be recovered by action, or other
28 proceeding, brought by the association.

29 (2) Any claimant having collision coverage on a loss that is
30 covered by the insolvent company's liability policy shall first
31 proceed against his or her collision carrier. Neither that claimant
32 nor the collision carrier, if it is a member of the association, shall
33 have the right to sue or continue a suit against the insured of the
34 insolvent insurance company for that collision damage.

35 (d) The association shall have the right to recover from any
36 person who is an affiliate of the insolvent insurer and whose
37 liability obligations to other persons are satisfied in whole or in
38 part by payments made under this article the amount of any covered
39 claim and allocated claims expense paid on behalf of that person
40 pursuant to this article.

1 (e) Any person having a claim or legal right of recovery under
2 any governmental insurance or guaranty program which is also a
3 covered claim, shall be required to first exhaust his or her right
4 under the program. Any amount payable on a covered claim shall
5 be reduced by the amount of any recovery under the program.

6 (f) “Covered claims” for unearned premium by lenders under
7 insurance premium finance agreements as defined in Section 673
8 shall be computed as of the earliest cancellation date of the policy
9 pursuant to Section 673.

10 (g) “Covered claims” shall not include any judgments against
11 or obligations or liabilities of the insolvent insurer or the
12 commissioner, as liquidator, or otherwise resulting from alleged
13 or proven torts, nor shall any default judgment or stipulated
14 judgment against the insolvent insurer, or against the insured of
15 the insolvent insurer, be binding against the association.

16 (h) “Covered claims” shall not include any loss adjustment
17 expenses, including adjustment fees and expenses, attorney’s fees
18 and expenses, court costs, interest, and bond premiums, incurred
19 prior to the appointment of a liquidator.

20 SEC. 144. Section 10136 of the Insurance Code is amended
21 to read:

22 10136. (a) No direct or indirect transfer of structured settlement
23 payment rights by a payee to which this article applies shall be
24 effective, and no structured settlement obligor or annuity issuer
25 shall be required to make any payment directly or indirectly to a
26 transferee, unless all of the provisions of this section are satisfied.

27 (b) Ten or more days before the payee executes a transfer
28 agreement, the transferee shall provide the payee with a separate
29 written disclosure statement, accurately completed with the
30 information that applies to the transfer agreement, in substantially
31 the following form, in at least 12-point type unless otherwise
32 indicated (bracketed instructions shall not appear in the form):

33
34 “Disclosure Notice Required By Law [14-point boldface type]

35 You are selling (technically called ‘transferring’) your right to
36 receive your payments under a structured settlement. You should
37 get this disclosure notice at least 10 days before you sign any
38 contract.

1 **IMPORTANT TERMS:** [14-point boldface type]

2
3 You have agreed to sell to the transferee future payments totaling
4 ____ dollars (\$____) in exchange for a purchase price of ____
5 dollars (\$____).

6 Those future payments have a discounted present value equal
7 to ____ dollars (\$____), calculated by applying the discount rate
8 of ____ percent utilized by the Internal Revenue Service to value
9 annuities in probate proceedings.

10 The purchase price to be paid to you was calculated using a
11 discount rate of ____ percent.

12 The purchase price payable to you is less than the present value
13 of the future payments stated above because the discount rate of
14 your transaction is greater than the rate utilized by the Internal
15 Revenue Service.

16 For comparison purposes:

17 If you did not sell your right to receive structured settlement
18 payments, but instead borrowed the net amount of \$____ and paid
19 that loan back in installments with each of the payments you are
20 now selling, the equivalent interest rate you would be paying for
21 that loan would be ____% per year.

22 [The text and information set forth above under ‘IMPORTANT
23 TERMS’ shall be in 14-point type and circumscribed by a box
24 with a bold border]

25 To figure the net amount we are paying, we have charged you
26 for the following expenses:

27
28 [itemize in a list by type and amount]

29
30 for a total of \$____ in expenses.

31 You should get independent professional advice about whether
32 selling your structured settlement payments is a good idea for you
33 and for your dependents.

34 You are advised to seek independent legal or financial advice
35 regarding the transaction and, under the law, the cost of that advice,
36 up to one thousand five hundred dollars (\$1,500), will be paid by
37 the transferee, the person or entity to whom you have agreed to
38 transfer and assign the payments in question. The transferee or
39 purchaser’s accountant, counsel, or actuary may not advise you in
40 this transaction.

1 You also should get independent professional advice from an
2 accountant or lawyer experienced in tax matters about any income
3 tax consequences from selling your structured settlement payments.
4 We cannot give you the name of anyone to advise you.

5 Court approval is needed [14-point boldface type]. A court must
6 approve any agreement you sign to sell your rights under a
7 structured settlement. You will not receive any money until the
8 court approves the sale. Court approval could take more than 30
9 days following the day you sign an agreement selling your rights
10 under a structured settlement.

11 A sale of future structured settlement payments will mean that
12 you will no longer receive the future payments that are sold. You
13 are advised to enter into this transaction only after you have
14 carefully considered the consequences of the transaction.

15 You may cancel the contract before court approval [14-point
16 boldface type]. You may cancel the agreement selling (or
17 transferring) your rights under a structured settlement without any
18 cost or obligation. You may cancel at any time before the court
19 approves the contract. You will get notice of the date of the court
20 hearing.

21 If you want to cancel, you do not need any special form. But,
22 you must cancel in writing. Send your cancellation to: [insert
23 transferee's name and address].

24 If you believe that you have been treated unfairly or have been
25 misled, you should contact your local district attorney or the state
26 Attorney General.”

27
28 (c) The transfer agreement shall be written in at least 12-point
29 type and shall be complete and without blank spaces to be
30 completed after the payee's signature. The transfer agreement shall
31 set forth clear and conspicuously, and in no less than 12-point type,
32 all of the following:

33 (1) A statement that the agreement is not effective until the date
34 on which a court enters a final order approving the transfer
35 agreement and that payment to the payee pursuant to the transfer
36 agreement will be delayed up to 30 days or more after the date the
37 payee signed the transfer agreement in order for the court to review
38 and approve the transfer agreement.

39 (2) The amounts and due dates of the structured settlement
40 payments to be transferred.

1 (3) The aggregate amount of the structured settlement payments
2 to be transferred. This amount shall be disclosed in the form
3 prescribed in subdivision (b).

4 (4) The aggregate amount of all expenses, if any, to be deducted
5 from the purchase price to be paid to the payee in exchange for
6 the payments to be transferred, and an itemization of all expenses
7 by type and amount.

8 (5) The amount payable to the payee, net of all expenses, in
9 exchange for the payments to be transferred. This amount shall be
10 disclosed in the form prescribed in subdivision (b).

11 (6) The discounted present value of all structured settlement
12 payments to be transferred and a statement that “This is the value
13 of your structured settlement in current dollars.” This amount shall
14 be disclosed in the form prescribed in subdivision (b).

15 (7) The federal rate, as described in subdivision (c) of Section
16 10134, used in determining the discounted present value.

17 (8) The effective equivalent interest rate, which shall be
18 disclosed in the following statement:

19
20 “YOU WILL BE PAYING THE EQUIVALENT OF AN
21 INTEREST RATE OF ____% PER YEAR.

22 Based on the net amount that you will receive from us and the
23 amounts and timing of the structured settlement payments that you
24 are transferring to us, if the transferred structured settlement
25 payments were installment payments on a loan, with each payment
26 applied first to accrued unpaid interest and then to principal, it
27 would be as if you were paying interest to us of ____% per year,
28 assuming funding on the effective date of transfer.”
29

30 This percentage amount shall be disclosed in the form prescribed
31 in subdivision (b) in the space for “the equivalent interest rate you
32 would be paying for this loan would be ____% per year.”

33 (9) The quotient (expressed as a percentage) obtained by
34 dividing the net payment amount by the discounted present value
35 of the payments.

36 (10) A statement that the payee should obtain independent
37 professional advice regarding any federal and state income tax
38 consequences arising from the proposed transfer, and that the
39 transferee may not refer the payee to any specific adviser for that
40 purpose.

1 (11) A statement that the court approving the transfer agreement
2 retains continuing jurisdiction to interpret and monitor
3 implementation of the agreement as justice may require.

4 (12) The following statement: “If you believe you were treated
5 unfairly or were misled as to the nature of the obligations you
6 assumed upon entering into this agreement, you should report those
7 circumstances to your local district attorney or the office of the
8 Attorney General.”

9 (13) The following statement printed in 14-point type,
10 circumscribed by a box with a bold border, and set forth
11 immediately above or adjacent to the space reserved for the payee’s
12 signature: “You have the right to cancel this agreement without
13 any cost or obligation until the date the court approves this
14 agreement. You will receive notice of the court hearing date when
15 approval may occur. You must cancel in writing and send your
16 cancellation to [insert transferee’s name and address].”

17 (d) The contract for transferring the structured settlement
18 payment rights may not violate Section 10138.

19 (e) At any time before the date on which a court enters a final
20 order approving the transfer agreement pursuant to Section
21 10139.5, the payee may cancel the transfer agreement, without
22 cost or further obligation, by providing written notice of
23 cancellation to the transferee.

24 SEC. 145. Section 10192.4 of the Insurance Code is amended
25 to read:

26 10192.4. The following definitions apply for the purposes of
27 this article:

28 (a) “Applicant” means:

29 (1) The person who seeks to contract for insurance benefits, in
30 the case of an individual Medicare supplement policy.

31 (2) The proposed certificate holder, in the case of a group
32 Medicare supplement policy.

33 (b) “Bankruptcy” means that situation in which a Medicare
34 Advantage organization that is not an issuer has filed, or has had
35 filed against it, a petition for declaration of bankruptcy and has
36 ceased doing business in the state.

37 (c) “Certificate” means a certificate issued for delivery in this
38 state under a group Medicare supplement policy.

39 (d) “Certificate form” means the form on which the certificate
40 is issued for delivery by the issuer.

1 (e) “Continuous period of creditable coverage” means the period
2 during which an individual was covered by creditable coverage,
3 if during the period of the coverage the individual had no breaks
4 in coverage greater than 63 days.

5 (f) (1) “Creditable coverage” means, with respect to an
6 individual, coverage of the individual provided under any of the
7 following:

8 (A) Any individual or group contract, policy, certificate, or
9 program that is written or administered by a health care service
10 plan, health insurer, fraternal benefits society, self-insured
11 employer plan, or any other entity, in this state or elsewhere, and
12 that arranges or provides medical, hospital, and surgical coverage
13 not designed to supplement other private or governmental plans.
14 The term includes continuation or conversion coverage.

15 (B) Part A or B of Title XVIII of the federal Social Security
16 Act (42 U.S.C. Sec. 1395c et seq.) (Medicare).

17 (C) Title XIX of the federal Social Security Act (42 U.S.C. Sec.
18 1396 et seq.) (Medicaid (known as Medi-Cal in California)), other
19 than coverage consisting solely of benefits under Section 1928 of
20 that act.

21 (D) Chapter 55 of Title 10 of the United States Code
22 (CHAMPUS).

23 (E) A medical care program of the Indian Health Service or of
24 a tribal organization.

25 (F) A state health benefits risk pool.

26 (G) A health plan offered under Chapter 89 of Title 5 of the
27 United States Code (Federal Employees Health Benefits Program).

28 (H) A public health plan as defined in federal regulations
29 authorized by Section 2701(c)(1)(I) of the federal Public Health
30 Service Act, as amended by Public Law 104-191, the federal Health
31 Insurance Portability and Accountability Act of 1996.

32 (I) A health benefit plan under Section 5(e) of the federal Peace
33 Corps Act (Section 2504(e) of Title 22 of the United States Code).

34 (J) Any other publicly sponsored program, provided in this state
35 or elsewhere, of medical, hospital, and surgical care.

36 (K) Any other creditable coverage as defined by subsection (c)
37 of Section 2701 of Title XXVII of the federal Public Health Service
38 Act (42 U.S.C. Sec. 300gg(c)).

39 (2) “Creditable coverage” shall not include one or more, or any
40 combination of, the following:

1 (A) Coverage only for accident or disability income insurance,
2 or any combination thereof.

3 (B) Coverage issued as a supplement to liability insurance.

4 (C) Liability insurance, including general liability insurance
5 and automobile liability insurance.

6 (D) Workers' compensation or similar insurance.

7 (E) Automobile medical payment insurance.

8 (F) Credit-only insurance.

9 (G) Coverage for onsite medical clinics.

10 (H) Other similar insurance coverage, specified in federal
11 regulations, under which benefits for medical care are secondary
12 or incidental to other insurance benefits.

13 (3) "Creditable coverage" shall not include the following
14 benefits if they are provided under a separate policy, certificate,
15 or contract of insurance or are otherwise not an integral part of the
16 plan:

17 (A) Limited scope dental or vision benefits.

18 (B) Benefits for long-term care, nursing home care, home health
19 care, community-based care, or any combination thereof.

20 (C) Other similar, limited benefits as are specified in federal
21 regulations.

22 (4) "Creditable coverage" shall not include the following
23 benefits if offered as independent, noncoordinated benefits:

24 (A) Coverage only for a specified disease or illness.

25 (B) Hospital indemnity or other fixed indemnity insurance.

26 (5) "Creditable coverage" shall not include the following if
27 offered as a separate policy, certificate, or contract of insurance:

28 (A) Medicare supplemental health insurance as defined under
29 Section 1882(g)(1) of the federal Social Security Act.

30 (B) Coverage supplemental to the coverage provided under
31 Chapter 55 of Title 10 of the United States Code.

32 (C) Similar supplemental coverage provided to coverage under
33 a group health plan.

34 (g) "Employee welfare benefit plan" means a plan, fund, or
35 program of employee benefits as defined in Section 1002 of Title
36 29 of the United States Code (Employee Retirement Income
37 Security Act).

38 (h) "Insolvency" means when an issuer, licensed to transact the
39 business of insurance in this state, has had a final order of

1 liquidation entered against it with a finding of insolvency by a
2 court of competent jurisdiction in the issuer's state of domicile.

3 (i) "Issuer" includes insurance companies, fraternal benefit
4 societies, and any other entity delivering, or issuing for delivery,
5 Medicare supplement policies or certificates in this state, except
6 entities subject to Article 3.5 (commencing with Section 1358.1)
7 of Chapter 2.2 of Division 2 of the Health and Safety Code.

8 (j) "Medi-Cal" means California's version of Medicaid under
9 Title XIX of the federal Social Security Act.

10 (k) "Medicare" means the Health Insurance for the Aged Act,
11 Title XVIII of the Social Security Amendments of 1965, as
12 amended.

13 (l) "Medicare Advantage plan" means a plan of coverage for
14 health benefits under Medicare Part C and includes:

15 (1) Coordinated care plans that provide health care services,
16 including, but not limited to, health care service plans (with or
17 without a point-of-service option), plans offered by
18 provider-sponsored organizations, and preferred provider
19 organizations plans.

20 (2) Medical savings account plans coupled with a contribution
21 into a Medicare Advantage medical savings account.

22 (3) Medicare Advantage private fee-for-service plans.

23 (m) "Medicare supplement policy" means a group or individual
24 policy of health insurance, other than a policy issued pursuant to
25 a contract under Section 1876 of the federal Social Security Act
26 (42 U.S.C. Sec. 1395mm) or an issued policy under a
27 demonstration project specified in Section 1395ss(g)(1) of Title
28 42 of the United States Code, that is advertised, marketed, or
29 designed primarily as a supplement to reimbursements under
30 Medicare for the hospital, medical, or surgical expenses of persons
31 eligible for Medicare. "Medicare supplement policy" does not
32 include a Medicare Advantage plan established under Medicare
33 Part C, an outpatient prescription drug plan established under
34 Medicare Part D, or a health care prepayment plan that provides
35 benefits pursuant to an agreement under subparagraph (A) of
36 paragraph (1) of subsection (a) of Section 1833 of the federal Social
37 Security Act.

38 (n) "Policy form" means the form on which the policy is issued
39 for delivery by the issuer.

(o) “1990 standardized Medicare supplement benefit plan,” “1990 standardized benefit plan,” or “1990 plan” means a group or individual policy of Medicare supplement insurance issued on or after July 21, 1992, and with an effective date prior to June 1, 2010, and includes Medicare supplement insurance policies and certificates renewed on or after that date which are not replaced by the issuer at the request of the insured.

(p) “2010 standardized Medicare supplement benefit plan,” “2010 standardized benefit plan,” or “2010 plan” means a group or individual policy of Medicare supplement insurance issued with an effective date on or after June 1, 2010.

(q) “Secretary” means the Secretary of the United States Department of Health and Human Services.

SEC. 146. Section 10192.81 of the Insurance Code is amended to read:

10192.81. The following standards are applicable to all Medicare supplement policies or certificates delivered or issued for delivery in this state with an effective date on or after June 1, 2010. No policy or certificate may be advertised, solicited, delivered, or issued for delivery in this state as a Medicare supplement policy or certificate unless it complies with these benefit standards. No issuer may offer any 1990 standardized Medicare supplement benefit plan for sale with an effective date on or after June 1, 2010. Benefit standards applicable to Medicare supplement policies and certificates issued with an effective date prior to June 1, 2010, remain subject to the requirements of Section 10192.8.

(a) The following general standards apply to Medicare supplement policies and certificates and are in addition to all other requirements of this article:

(1) A Medicare supplement policy or certificate shall not exclude or limit benefits for losses incurred more than six months from the effective date of coverage because it involved a preexisting condition. The policy or certificate shall not define a preexisting condition more restrictively than a condition for which medical advice was given or treatment was recommended by or received from a physician within six months before the effective date of coverage.

1 (2) A Medicare supplement policy or certificate shall not
2 indemnify against losses resulting from sickness on a different
3 basis than losses resulting from accidents.

4 (3) A Medicare supplement policy or certificate shall provide
5 that benefits designed to cover cost-sharing amounts under
6 Medicare will be changed automatically to coincide with any
7 changes in the applicable Medicare deductible, copayment, or
8 coinsurance amounts. Premiums may be modified to correspond
9 with those changes.

10 (4) A Medicare supplement policy or certificate shall not provide
11 for termination of coverage of a spouse solely because of the
12 occurrence of an event specified for termination of coverage of
13 the insured, other than the nonpayment of premium.

14 (5) Each Medicare supplement policy shall be guaranteed
15 renewable.

16 (A) The issuer shall not cancel or nonrenew the policy solely
17 on the ground of health status of the individual.

18 (B) The issuer shall not cancel or nonrenew the policy for any
19 reason other than nonpayment of premium or material
20 misrepresentation which is shown by the issuer to be material to
21 the acceptance for coverage. The contestability period for Medicare
22 supplement insurance shall be two years, pursuant to Section
23 10350.2.

24 (C) If the Medicare supplement policy is terminated by the
25 master policyholder and is not replaced as provided under
26 subparagraph (E), the issuer shall offer certificate holders an
27 individual Medicare supplement policy which, at the option of the
28 certificate holder, does one of the following:

29 (i) Provides for continuation of the benefits contained in the
30 group policy.

31 (ii) Provides for benefits that otherwise meet the requirements
32 of one of the standardized policies defined in this article.

33 (D) If an individual is a certificate holder in a group Medicare
34 supplement policy and the individual terminates membership in
35 the group, the issuer shall do one of the following:

36 (i) Offer the certificate holder the conversion opportunity
37 described in subparagraph (C).

38 (ii) At the option of the group policyholder, offer the certificate
39 holder continuation of coverage under the group policy.

1 (E) (i) If a group Medicare supplement policy is replaced by
2 another group Medicare supplement policy purchased by the same
3 policyholder, the issuer of the replacement policy shall offer
4 coverage to all persons covered under the old group policy on its
5 date of termination. Coverage under the new policy shall not result
6 in any exclusion for preexisting conditions that would have been
7 covered under the group policy being replaced.

8 (ii) If a Medicare supplement policy or certificate replaces
9 another Medicare supplement policy or certificate that has been
10 in force for six months or more, the replacing issuer shall not
11 impose an exclusion or limitation based on a preexisting condition.
12 If the original coverage has been in force for less than six months,
13 the replacing issuer shall waive any time period applicable to
14 preexisting conditions, waiting periods, elimination periods, or
15 probationary periods in the new policy or certificate to the extent
16 the time was spent under the original coverage.

17 (6) Termination of a Medicare supplement policy or certificate
18 shall be without prejudice to any continuous loss that commenced
19 while the policy was in force, but the extension of benefits beyond
20 the period during which the policy was in force may be predicated
21 upon the continuous total disability of the insured, limited to the
22 duration of the policy benefit period, if any, or payment of the
23 maximum benefits. Receipt of Medicare Part D benefits shall not
24 be considered in determining a continuous loss.

25 (7) (A) (i) A Medicare supplement policy or certificate shall
26 provide that benefits and premiums under the policy or certificate
27 shall be suspended at the request of the policyholder or certificate
28 holder for the period, not to exceed 24 months, in which the
29 policyholder or certificate holder has applied for and is determined
30 to be entitled to medical assistance under Medi-Cal, but only if
31 the policyholder or certificate holder notifies the issuer of the
32 policy or certificate within 90 days after the date the individual
33 becomes entitled to assistance. Upon receipt of timely notice, the
34 insurer shall return directly to the insured that portion of the
35 premium attributable to the period of Medi-Cal eligibility, subject
36 to adjustment for paid claims.

37 (ii) If suspension occurs and if the policyholder or certificate
38 holder loses entitlement to medical assistance under Medi-Cal, the
39 policy or certificate shall be automatically reinstituted (effective
40 as of the date of termination of entitlement) as of the termination

1 of entitlement if the policyholder or certificate holder provides
2 notice of loss of entitlement within 90 days after the date of loss
3 and pays the premium attributable to the period, effective as of the
4 date of termination of entitlement or equivalent coverage shall be
5 provided if the prior form is no longer available.

6 (iii) Each Medicare supplement policy shall provide that benefits
7 and premiums under the policy shall be suspended (for any period
8 that may be provided by federal regulation) at the request of the
9 policyholder if the policyholder is entitled to benefits under Section
10 226(b) of the federal Social Security Act and is covered under a
11 group health plan (as defined in Section 1862(b)(1)(A)(v) of the
12 federal Social Security Act). If suspension occurs and if the
13 policyholder or certificate holder loses coverage under the group
14 health plan, the policy shall be automatically reinstituted (effective
15 as of the date of loss of coverage) if the policyholder provides
16 notice of loss of coverage within 90 days after the date of the loss
17 and pays the applicable premium.

18 (B) Reinstitution of coverages shall comply with all of the
19 following requirements:

20 (i) Not provide for any waiting period with respect to treatment
21 of preexisting conditions.

22 (ii) Provide for resumption of coverage that is substantially
23 equivalent to coverage in effect before the date of suspension.

24 (iii) Provide for classification of premiums on terms at least as
25 favorable to the policyholder or certificate holder as the premium
26 classification terms that would have applied to the policyholder
27 or certificate holder had the coverage not been suspended.

28 (8) A Medicare supplement policy shall not limit coverage
29 exclusively to a single disease or affliction.

30 (9) A Medicare supplement policy shall provide an examination
31 period of 30 days after the receipt of the policy by the applicant
32 for purposes of review, during which time the applicant may return
33 the policy as described in subdivision (e) of Section 10192.17.

34 (b) With respect to the standards for basic (core) benefits for
35 benefit plans A, B, C, D, F, high deductible F, G, M, and N, every
36 issuer of Medicare supplement insurance benefit plans shall make
37 available a policy or certificate including only the following basic
38 “core” package of benefits to each prospective insured. An issuer
39 may make available to prospective insureds any of the other
40 Medicare Supplement Insurance Benefit Plans in addition to the

1 basic (core) package, but not in lieu of it. However, the benefits
2 described in paragraphs (7) and (8) shall not be offered so long as
3 California is required to disallow these benefits for Medicare
4 beneficiaries by the Centers for Medicare and Medicaid Services
5 or other agent of the federal government under Section 1395ss of
6 Title 42 of the United States Code.

7 (1) Coverage of Part A Medicare eligible expenses for
8 hospitalization to the extent not covered by Medicare from the
9 61st day through the 90th day, inclusive, in any Medicare benefit
10 period.

11 (2) Coverage of Part A Medicare eligible expenses incurred for
12 hospitalization to the extent not covered by Medicare for each
13 Medicare lifetime inpatient reserve day used.

14 (3) Upon exhaustion of the Medicare hospital inpatient coverage,
15 including the lifetime reserve days, coverage of 100 percent of the
16 Medicare Part A eligible expenses for hospitalization paid at the
17 applicable prospective payment system (PPS) rate, or other
18 appropriate Medicare standard of payment, subject to a lifetime
19 maximum benefit of an additional 365 days. The provider shall
20 accept the issuer's payment as payment in full and may not bill
21 the insured for any balance.

22 (4) Coverage under Medicare Parts A and B for the reasonable
23 cost of the first three pints of blood, or equivalent quantities of
24 packed red blood cells, as defined under federal regulations, unless
25 replaced in accordance with federal regulations.

26 (5) Coverage for the coinsurance amount, or in the case of
27 hospital outpatient department services paid under a prospective
28 payment system, the copayment amount, of Medicare eligible
29 expenses under Part B regardless of hospital confinement, subject
30 to the Medicare Part B deductible.

31 (6) Coverage of cost sharing for all Part A Medicare eligible
32 hospice care and respite care expenses.

33 (7) Coverage of the actual cost, up to the legally billed amount,
34 of an annual mammogram as provided in Section 10123.81, to the
35 extent not paid by Medicare.

36 (8) Coverage of the actual cost, up to the legally billed amount,
37 of an annual cervical cancer screening test as provided in Section
38 10123.18, to the extent not paid by Medicare.

39 (c) The following additional benefits shall be included in
40 Medicare supplement benefit plans B, C, D, F, high deductible F,

1 G, M, and N, consistent with the plan type and benefits for each
2 plan as provided in Section 10192.91:

3 (1) With respect to the Medicare Part A deductible, coverage
4 for 100 percent of the Medicare Part A inpatient hospital deductible
5 amount per benefit period.

6 (2) With respect to the Medicare Part A deductible, coverage
7 for 50 percent of the Medicare Part A inpatient hospital deductible
8 amount per benefit period.

9 (3) With respect to skilled nursing facility care, coverage for
10 the actual billed charges up to the coinsurance amount from the
11 21st day through the 100th day in a Medicare benefit period for
12 posthospital skilled nursing facility care eligible under Medicare
13 Part A.

14 (4) With respect to the Medicare Part B deductible, coverage
15 for 100 percent of the Medicare Part B deductible amount per
16 calendar year regardless of hospital confinement.

17 (5) With respect to 100 percent of the Medicare Part B excess
18 charges, coverage for all of the difference between the actual
19 Medicare Part B charges as billed, not to exceed any charge
20 limitation established by the Medicare Program or state law, and
21 the Medicare-approved Part B charge.

22 (6) With respect to medically necessary emergency care in a
23 foreign country, coverage to the extent not covered by Medicare
24 for 80 percent of the billed charges for Medicare-eligible expenses
25 for medically necessary emergency hospital, physician, and medical
26 care received in a foreign country, which care would have been
27 covered by Medicare if provided in the United States and which
28 care began during the first 60 consecutive days of each trip outside
29 the United States, subject to a calendar year deductible of two
30 hundred fifty dollars (\$250), and a lifetime maximum benefit of
31 fifty thousand dollars (\$50,000). For purposes of this benefit,
32 “emergency care” shall mean care needed immediately because
33 of an injury or an illness of sudden and unexpected onset.

34 SEC. 147. Section 10192.12 of the Insurance Code is amended
35 to read:

36 10192.12. (a) (1) With respect to the guaranteed issue of a
37 Medicare supplement policy, eligible persons are those individuals
38 described in subdivision (b) who seek to enroll under the policy
39 during the period specified in subdivision (c), and who submit
40 evidence of the date of termination or disenrollment or enrollment

1 in Medicare Part D with the application for a Medicare supplement
2 policy.

3 (2) With respect to eligible persons, an issuer shall not take any
4 of the following actions:

5 (A) Deny or condition the issuance or effectiveness of a
6 Medicare supplement policy described in subdivision (e) that is
7 offered and is available for issuance to new enrollees by the issuer.

8 (B) Discriminate in the pricing of that Medicare supplement
9 policy because of health status, claims experience, receipt of health
10 care, or medical condition.

11 (C) Impose an exclusion of benefits based on a preexisting
12 condition under that Medicare supplement policy.

13 (b) An eligible person is an individual described in any of the
14 following paragraphs:

15 (1) The individual is enrolled under an employee welfare benefit
16 plan that provides health benefits that supplement the benefits
17 under Medicare and either of the following applies:

18 (A) The plan either terminates or ceases to provide all of those
19 supplemental health benefits to the individual.

20 (B) The employer no longer provides the individual with
21 insurance that covers all of the payment for the 20-percent
22 coinsurance.

23 (2) The individual is enrolled with a Medicare Advantage
24 organization under a Medicare Advantage plan under Medicare
25 Part C, and any of the following circumstances apply:

26 (A) The certification of the organization or plan has been
27 terminated.

28 (B) The organization has terminated or otherwise discontinued
29 providing the plan in the area in which the individual resides.

30 (C) The individual is no longer eligible to elect the plan because
31 of a change in the individual's place of residence or other change
32 in circumstances specified by the secretary. Those changes in
33 circumstances shall not include termination of the individual's
34 enrollment on the basis described in Section 1851(g)(3)(B) of the
35 federal Social Security Act where the individual has not paid
36 premiums on a timely basis or has engaged in disruptive behavior
37 as specified in standards under Section 1856 of the federal Social
38 Security Act, or the plan is terminated for all individuals within a
39 residence area.

(D) The Medicare Advantage plan in which the individual is enrolled reduces any of its benefits or increases the amount of cost sharing or discontinues for other than good cause relating to quality of care, its relationship or contract under the plan with a provider who is currently furnishing services to the individual. An individual shall be eligible under this subparagraph for a Medicare supplement policy issued by the same issuer through which the individual was enrolled at the time the reduction, increase, or discontinuance described above occurs or, commencing January 1, 2007, for one issued by a subsidiary of the parent company of that issuer or by a network that contracts with the parent company of that issuer.

(E) The individual demonstrates, in accordance with guidelines established by the secretary, either of the following:

(i) The organization offering the plan substantially violated a material provision of the organization's contract under this article in relation to the individual, including the failure to provide on a timely basis medically necessary care for which benefits are available under the plan or the failure to provide the covered care in accordance with applicable quality standards.

(ii) The organization, or agent or other entity acting on the organization's behalf, materially misrepresented the plan's provisions in marketing the plan to the individual.

(F) The individual meets other exceptional conditions as the secretary may provide.

(3) The individual is 65 years of age or older, is enrolled with a Program of All-Inclusive Care for the Elderly (PACE) provider under Section 1894 of the federal Social Security Act, and circumstances similar to those described in paragraph (2) exist that would permit discontinuance of the individual's enrollment with the provider, if the individual were enrolled in a Medicare Advantage plan.

(4) The individual meets both of the following conditions:

(A) The individual is enrolled with any of the following:

(i) An eligible organization under a contract under Section 1876 of the federal Social Security Act (Medicare cost).

(ii) A similar organization operating under demonstration project authority, effective for periods before April 1, 1999.

(iii) An organization under an agreement under Section 1833(a)(1)(A) of the federal Social Security Act (health care prepayment plan).

1 (iv) An organization under a Medicare Select policy.

2 (B) The enrollment ceases under the same circumstances that
3 would permit discontinuance of an individual's election of coverage
4 under paragraph (2) or (3).

5 (5) The individual is enrolled under a Medicare supplement
6 policy, and the enrollment ceases because of any of the following
7 circumstances:

8 (A) The insolvency of the issuer or bankruptcy of the nonissuer
9 organization, or other involuntary termination of coverage or
10 enrollment under the policy.

11 (B) The issuer of the policy substantially violated a material
12 provision of the policy.

13 (C) The issuer, or an agent or other entity acting on the issuer's
14 behalf, materially misrepresented the policy's provisions in
15 marketing the policy to the individual.

16 (6) The individual meets both of the following conditions:

17 (A) The individual was enrolled under a Medicare supplement
18 policy and terminates enrollment and subsequently enrolls, for the
19 first time, with any Medicare Advantage organization under a
20 Medicare Advantage plan under Medicare Part C, any eligible
21 organization under a contract under Section 1876 of the federal
22 Social Security Act (Medicare cost), any similar organization
23 operating under demonstration project authority, any PACE
24 provider under Section 1894 of the federal Social Security Act, or
25 a Medicare Select policy.

26 (B) The subsequent enrollment under subparagraph (A) is
27 terminated by the individual during any period within the first 12
28 months of the subsequent enrollment (during which the enrollee
29 is permitted to terminate the subsequent enrollment under Section
30 1851(e) of the federal Social Security Act).

31 (7) The individual upon first becoming eligible for benefits
32 under Medicare Part A at 65 years of age enrolls in a Medicare
33 Advantage plan under Medicare Part C or with a PACE provider
34 under Section 1894 of the federal Social Security Act, and
35 disenrolls from the plan or program not later than 12 months after
36 the effective date of enrollment.

37 (8) The individual while enrolled under a Medicare supplement
38 policy that covers outpatient prescription drugs enrolls in a
39 Medicare Part D plan during the initial enrollment period
40 terminates enrollment in the Medicare supplement policy, and

1 submits evidence of enrollment in Medicare Part D along with the
2 application for a policy described in paragraph (4) of subdivision
3 (e).

4 (c) (1) In the case of an individual described in paragraph (1)
5 of subdivision (b), the guaranteed issue period begins on the later
6 of the following two dates and ends on the date that is 63 days
7 after the date the applicable coverage terminates:

8 (A) The date the individual receives a notice of termination or
9 cessation of all supplemental health benefits or, if no notice is
10 received, the date of the notice denying a claim because of a
11 termination or cessation of benefits.

12 (B) The date that the applicable coverage terminates or ceases.

13 (2) In the case of an individual described in paragraphs (2), (3),
14 (4), (6), and (7) of subdivision (b) whose enrollment is terminated
15 involuntarily, the guaranteed issue period begins on the date that
16 the individual receives a notice of termination and ends 63 days
17 after the date the applicable coverage is terminated.

18 (3) In the case of an individual described in subparagraph (A)
19 of paragraph (5) of subdivision (b), the guaranteed issue period
20 begins on the earlier of the following two dates and ends on the
21 date that is 63 days after the date the coverage is terminated:

22 (A) The date that the individual receives a notice of termination,
23 a notice of the issuer's bankruptcy or insolvency, or other similar
24 notice if any.

25 (B) The date that the applicable coverage is terminated.

26 (4) In the case of an individual described in paragraph (2), (3),
27 (6), or (7) of, or in subparagraph (B) or (C) of paragraph (5) of,
28 subdivision (b) who disenrolls voluntarily, the guaranteed issue
29 period begins on the date that is 60 days before the effective date
30 of the disenrollment and ends on the date that is 63 days after the
31 effective date of the disenrollment.

32 (5) In the case of an individual described in paragraph (8) of
33 subdivision (b), the guaranteed issue period begins on the date the
34 individual receives notice pursuant to Section 1882(v)(2)(B) of
35 the federal Social Security Act from the Medicare supplement
36 issuer during the 60-day period immediately preceding the initial
37 enrollment period for Medicare Part D and ends on the date that
38 is 63 days after the effective date of the individual's coverage
39 under Medicare Part D.

(6) In the case of an individual described in subdivision (b) who is not included in this subdivision, the guaranteed issue period begins on the effective date of disenrollment and ends on the date that is 63 days after the effective date of disenrollment.

(d) (1) In the case of an individual described in paragraph (6) of subdivision (b), or deemed to be so described pursuant to this paragraph, whose enrollment with an organization or provider described in subparagraph (A) of paragraph (6) of subdivision (b) is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls with another such organization or provider, the subsequent enrollment shall be deemed to be an initial enrollment described in paragraph (6) of subdivision (b).

(2) In the case of an individual described in paragraph (7) of subdivision (b), or deemed to be so described pursuant to this paragraph, whose enrollment with a plan or in a program described in paragraph (7) of subdivision (b) is involuntarily terminated within the first 12 months of enrollment and who, without an intervening enrollment, enrolls in another such plan or program, the subsequent enrollment shall be deemed to be an initial enrollment described in paragraph (7) of subdivision (b).

(3) For purposes of paragraphs (6) and (7) of subdivision (b), an enrollment of an individual with an organization or provider described in subparagraph (A) of paragraph (6) of subdivision (b), or with a plan or in a program described in paragraph (7) of subdivision (b) shall not be deemed to be an initial enrollment under this paragraph after the two-year period beginning on the date on which the individual first enrolled with such an organization, provider, plan, or program.

(e) (1) Under paragraphs (1), (2), (3), (4), and (5) of subdivision (b), an eligible individual is entitled to a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, or L offered by any issuer.

(2) (A) Under paragraph (6) of subdivision (b), an eligible individual is entitled to the same Medicare supplement policy in which he or she was most recently enrolled, if available from the same issuer. If that policy is not available, the eligible individual is entitled to a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, or L offered by any issuer.

(B) On and after January 1, 2006, an eligible individual described in this paragraph who was most recently enrolled in a Medicare supplement policy with an outpatient prescription drug benefit is entitled to a Medicare supplement policy that is available from the same issuer but without an outpatient prescription drug benefit or, at the election of the individual, has a benefit package classified as a Plan A, B, C, F (including high deductible Plan F), K, or L that is offered by any issuer.

(3) Under paragraph (7) of subdivision (b), an eligible individual is entitled to any Medicare supplement policy offered by any issuer.

(4) Under paragraph (8) of subdivision (b), an eligible individual is entitled to a Medicare supplement policy that has a benefit package classified as Plan A, B, C, F (including a high deductible Plan F), K, or L and that is offered and is available for issuance to a new enrollee by the same issuer that issued the individual's Medicare supplement policy with outpatient prescription drug coverage.

(f) (1) At the time of an event described in subdivision (b) by which an individual loses coverage or benefits due to the termination of a contract or agreement, policy, or plan, the organization that terminates the contract or agreement, the issuer terminating the policy, or the administrator of the plan being terminated, respectively, shall notify the individual of his or her rights under this section and of the obligations of issuers of Medicare supplement policies under subdivision (a). The notice shall be communicated contemporaneously with the notification of termination.

(2) At the time of an event described in subdivision (b) by which an individual ceases enrollment under a contract or agreement, policy, or plan, the organization that offers the contract or agreement, regardless of the basis for the cessation of enrollment, the issuer offering the policy, or the administrator of the plan, respectively, shall notify the individual of his or her rights under this section, and of the obligations of issuers of Medicare supplement policies under subdivision (a). The notice shall be communicated within 10 working days of the date the issuer received notification of disenrollment.

(g) An issuer shall refund any unearned premium that an insured paid in advance and shall terminate coverage upon the request of an insured.

1 SEC. 148. Section 10192.20 of the Insurance Code is amended
2 to read:

3 10192.20. (a) An issuer, directly or through its producers, shall
4 do each of the following:

5 (1) Establish marketing procedures to ensure that any
6 comparison of policies by its agents or other producers will be fair
7 and accurate.

8 (2) Establish marketing procedures to ensure that excessive
9 insurance is not sold or issued.

10 (3) Display prominently by type, stamp, or other appropriate
11 means, on the first page of the policy, the following:

12 “Notice to buyer: This policy may not cover all of your medical
13 expenses.”

14 (4) Inquire and otherwise make every reasonable effort to
15 identify whether a prospective applicant for a Medicare supplement
16 policy already has health insurance and the types and amounts of
17 that insurance.

18 (5) Establish auditable procedures for verifying compliance
19 with this subdivision.

20 (b) In addition to the practices prohibited by this code or any
21 other law, the following acts and practices are prohibited:

22 (1) Twisting, which means knowingly making any misleading
23 representation or incomplete or fraudulent comparison of any
24 insurance policies or insurers for the purpose of inducing or tending
25 to induce, any person to lapse, forfeit, surrender, terminate, retain,
26 pledge, assign, borrow on, or convert an insurance policy or to
27 take out a policy of insurance with another insurer.

28 (2) High pressure tactics, which means employing any method
29 of marketing having the effect of or tending to induce the purchase
30 of insurance through force, fright, threat, whether explicit or
31 implied, or undue pressure to purchase or recommend the purchase
32 of insurance.

33 (3) Cold lead advertising, which means making use directly or
34 indirectly of any method of marketing that fails to disclose in a
35 conspicuous manner that a purpose of the method of marketing is
36 the solicitation of insurance and that contact will be made by an
37 insurance agent or insurance company.

38 (c) The terms “Medicare supplement,” “Medigap,” “Medicare
39 Wrap-Around” and words of similar import shall not be used unless
40 the policy is issued in compliance with this article.

(d) The commissioner each year shall prepare a rate guide for Medicare supplement insurance and Medicare supplement contracts. The commissioner each year shall make the rate guide available on or before the date of the fall Medicare annual open enrollment. The rate guide shall include all of the following for each company that sells Medicare supplemental insurance or Medicare supplement contracts in California:

(1) (A) For policies sold for effective dates prior to June 1, 2010, a listing of all the policies, plans A to L, inclusive, that are available from the company.

(B) For policies sold for effective dates on or after June 1, 2010, a listing of all the policies, plans A to D, inclusive, F, high deductible F, G, and K to N, inclusive, that are available from the company.

(2) (A) For policies sold for effective dates prior to June 1, 2010, a listing of all the policies, plans A to L, inclusive, for Medicare beneficiaries under 65 years of age that are available from the company.

(B) For policies sold for effective dates on or after June 1, 2010, a listing of all the policies, plans, A to D, inclusive, F, high deductible F, G, and K to N, inclusive, for Medicare beneficiaries under 65 years of age that are available from the company.

(3) The toll-free telephone number of the company that consumers can use to obtain information from the company.

(4) Sample rates for each policy listed pursuant to paragraphs (1) and (2). The sample rates shall be for ages 0–65, 65, 70, 75, and 80.

(5) The premium rate methodology for each policy listed pursuant to paragraphs (1) and (2). “Premium rate methodology” means attained age, issue age, or community rated.

(6) The waiting period for preexisting conditions for each policy listed pursuant to paragraphs (1) and (2).

(e) The consumer rate guide prepared pursuant to subdivision (d) shall be distributed using all of the following methods:

(1) Through Health Insurance Counseling and Advocacy Program (HICAP) offices.

(2) By telephone, using the department’s consumer toll-free telephone number.

(3) On the department’s Internet Web site.

(4) In addition to the distribution methods described in paragraphs (1) to (3), inclusive, each insurer that markets Medicare supplement insurance or Medicare supplement contracts in this state shall provide on the application form a statement that reads as follows: “A rate guide is available that compares the policies sold by different insurers. You can obtain a copy of this rate guide by calling the Department of Insurance’s consumer toll-free telephone number (1-800-927-HELP), by calling the Health Insurance Counseling and Advocacy Program (HICAP) toll-free telephone number (1-800-434-0222), or by accessing the Department of Insurance’s Internet Web site (www.insurance.ca.gov).”

SEC. 149. Section 10198.6 of the Insurance Code is amended to read:

10198.6. For purposes of this article:

(a) “Health benefit plan” means any group or individual policy or contract that provides medical, hospital, or surgical benefits. The term does not include accident only, credit, disability income, coverage of Medicare services pursuant to contracts with the United States government, Medicare supplement, long-term care insurance, dental, vision, coverage issued as a supplement to liability insurance, insurance arising out of a workers’ compensation or similar law, automobile medical payment insurance, or insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability insurance policy or equivalent self-insurance.

(b) “Late enrollee” means an eligible employee or dependent who has declined health coverage under a health benefit plan offered through employment or sponsored by an employer at the time of the initial enrollment period provided under the terms of the health benefit plan, and who subsequently requests enrollment in a health benefit plan of that employer, provided that the initial enrollment period shall be a period of at least 30 days. However, an eligible employee or dependent shall not be considered a late enrollee if any of the following is applicable:

(1) The individual meets all of the following requirements:

(A) The individual was covered under another employer health benefit plan, the Healthy Families Program, the Access for Infants and Mothers (AIM) Program, or the Medi-Cal program at the time the individual was eligible to enroll.

1 (B) The individual certified, at the time of the initial enrollment
2 that coverage under another employer health benefit plan, the
3 Healthy Families Program, the AIM Program, or the Medi-Cal
4 program was the reason for declining enrollment provided that, if
5 the individual was covered under another employer health benefit
6 plan, the individual was given the opportunity to make the
7 certification required by this subdivision and was notified that
8 failure to do so could result in later treatment as a late enrollee.

9 (C) The individual has lost or will lose coverage under another
10 employer health benefit plan as a result of termination of
11 employment of the individual or of a person through whom the
12 individual was covered as a dependent, change in employment
13 status of the individual or of a person through whom the individual
14 was covered as a dependent, termination of the other plan's
15 coverage, cessation of an employer's contribution toward an
16 employee or dependent's coverage, death of a person through
17 whom the individual was covered as a dependent, legal separation,
18 or divorce; or the individual has lost or will lose coverage under
19 the Healthy Families Program, the AIM Program, or the Medi-Cal
20 program.

21 (D) The individual requests enrollment within 30 days after
22 termination of coverage, or cessation of employer contribution
23 toward coverage provided under another employer health benefit
24 plan, or requests enrollment within 60 days after termination of
25 Medi-Cal program coverage, AIM Program coverage, or Healthy
26 Families Program coverage.

27 (2) The individual is employed by an employer that offers
28 multiple health benefit plans and the individual elects a different
29 plan during an open enrollment period.

30 (3) A court has ordered that coverage be provided for a spouse
31 or minor child under a covered employee's health benefit plan.

32 (4) The carrier cannot produce a written statement from the
33 employer stating that, prior to declining coverage, the individual
34 or the person through whom the individual was eligible to be
35 covered as a dependent was provided with, and signed
36 acknowledgment of, explicit written notice in boldface type
37 specifying that failure to elect coverage during the initial
38 enrollment period permits the carrier to impose, at the time of the
39 individual's later decision to elect coverage, an exclusion from
40 coverage for a period of 12 months as well as a six-month

1 preexisting condition exclusion, unless the individual meets the
2 criteria specified in paragraph (1), (2), or (3).

3 (5) The individual is an employee or dependent who meets the
4 criteria described in paragraph (1) and was under a COBRA
5 continuation provision and the coverage under that provision has
6 been exhausted. For purposes of this section, the definition of
7 “COBRA” set forth in subdivision (e) of Section 10116.5 shall
8 apply.

9 (6) The individual is a dependent of an enrolled eligible
10 employee who has lost or will lose his or her coverage under the
11 Healthy Families Program, the AIM Program, or the Medi-Cal
12 program and requests enrollment within 60 days of termination of
13 that coverage.

14 (c) “Preexisting condition provision” means a policy provision
15 that excludes coverage for charges or expenses incurred during a
16 specified period following the insured’s effective date of coverage,
17 as to a condition for which medical advice, diagnosis, care, or
18 treatment was recommended or received during a specified period
19 immediately preceding the effective date of coverage.

20 (d) “Creditable coverage” means:

21 (1) Any individual or group policy, contract or program, that is
22 written or administered by a disability insurance company, health
23 care service plan, fraternal benefits society, self-insured employer
24 plan, or any other entity, in this state or elsewhere, and that
25 arranges or provides medical, hospital, and surgical coverage not
26 designed to supplement other private or governmental plans. The
27 term includes continuation or conversion coverage but does not
28 include accident only, credit, coverage for onsite medical clinics,
29 disability income, Medicare supplement, long-term care insurance,
30 dental, vision, coverage issued as a supplement to liability
31 insurance, insurance arising out of a workers’ compensation or
32 similar law, automobile medical payment insurance, or insurance
33 under which benefits are payable with or without regard to fault
34 and that is statutorily required to be contained in any liability
35 insurance policy or equivalent self-insurance.

36 (2) The federal Medicare Program pursuant to Title XVIII of
37 the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.).

38 (3) The Medicaid Program pursuant to Title XIX of the federal
39 Social Security Act (42 U.S.C. Sec. 1396 et seq.).

(4) Any other publicly sponsored program, provided in this state or elsewhere, of medical, hospital, and surgical care.

(5) 10 U.S.C. Chapter 55 (commencing with Section 1071) (Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)).

(6) A medical care program of the Indian Health Service or of a tribal organization.

(7) A state health benefits risk pool.

(8) A health plan offered under 5 U.S.C. Chapter 89 (commencing with Section 8901) (Federal Employees Health Benefits Program (FEHBP)).

(9) A public health plan as defined in federal regulations authorized by Section 2701(c)(1)(I) of the federal Public Health Service Act, as amended by Public Law 104-191, the federal Health Insurance Portability and Accountability Act of 1996.

(10) A health benefit plan under Section 5(e) of the federal Peace Corps Act (22 U.S.C. Sec. 2504(e)).

(11) Any other creditable coverage as defined by subsection (c) of Section 2701 of Title XXVII of the federal Public Health Service Act (42 U.S.C. Sec. 300gg(c)).

(e) “Affiliation period” means a period that, under the terms of the health benefit plan, must expire before health care services under the plan become effective.

(f) “Waivered condition” means a contract provision that excludes coverage for charges or expenses incurred during a specified period of time for one or more specific, identified, medical conditions.

SEC. 150. Section 10700 of the Insurance Code is amended to read:

10700. As used in this chapter:

(a) “Agent or broker” means a person or entity licensed under Chapter 5 (commencing with Section 1621) of Part 2 of Division 1.

(b) “Benefit plan design” means a specific health coverage product issued by a carrier to small employers, to trustees of associations that include small employers, or to individuals if the coverage is offered through employment or sponsored by an employer. It includes services covered and the levels of copayment and deductibles, and it may include the professional providers who are to provide those services and the sites where those services are

1 to be provided. A benefit plan design may also be an integrated
2 system for the financing and delivery of quality health care services
3 which has significant incentives for the covered individuals to use
4 the system.

5 (c) “Board” means the Major Risk Medical Insurance Board.

6 (d) “Carrier” means any disability insurance company or any
7 other entity that writes, issues, or administers health benefit plans
8 that cover the employees of small employers, regardless of the
9 situs of the contract or master policyholder. For the purposes of
10 Articles 3 (commencing with Section 10719) and 4 (commencing
11 with Section 10730), “carrier” also includes health care service
12 plans.

13 (e) “Dependent” means the spouse or child of an eligible
14 employee, subject to applicable terms of the health benefit plan
15 covering the employee, and includes dependents of guaranteed
16 association members if the association elects to include dependents
17 under its health coverage at the same time it determines its
18 membership composition pursuant to subdivision (z).

19 (f) “Eligible employee” means either of the following:

20 (1) Any permanent employee who is actively engaged on a
21 full-time basis in the conduct of the business of the small employer
22 with a normal workweek of at least 30 hours, in the small
23 employer’s regular place of business, who has met any statutorily
24 authorized applicable waiting period requirements. The term
25 includes sole proprietors or partners of a partnership, if they are
26 actively engaged on a full-time basis in the small employer’s
27 business, and they are included as employees under a health benefit
28 plan of a small employer, but does not include employees who
29 work on a part-time, temporary, or substitute basis. It includes any
30 eligible employee, as defined in this paragraph, who obtains
31 coverage through a guaranteed association. Employees of
32 employers purchasing through a guaranteed association shall be
33 deemed to be eligible employees if they would otherwise meet the
34 definition except for the number of persons employed by the
35 employer. A permanent employee who works at least 20 hours but
36 not more than 29 hours is deemed to be an eligible employee if all
37 four of the following apply:

38 (A) The employee otherwise meets the definition of an eligible
39 employee except for the number of hours worked.

1 (B) The employer offers the employee health coverage under a
2 health benefit plan.

3 (C) All similarly situated individuals are offered coverage under
4 the health benefit plan.

5 (D) The employee must have worked at least 20 hours per
6 normal workweek for at least 50 percent of the weeks in the
7 previous calendar quarter. The insurer may request any necessary
8 information to document the hours and time period in question,
9 including, but not limited to, payroll records and employee wage
10 and tax filings.

11 (2) Any member of a guaranteed association as defined in
12 subdivision (z).

13 (g) “Enrollee” means an eligible employee or dependent who
14 receives health coverage through the program from a participating
15 carrier.

16 (h) “Financially impaired” means, for the purposes of this
17 chapter, a carrier that, on or after the effective date of this chapter,
18 is not insolvent and is either:

19 (1) Deemed by the commissioner to be potentially unable to
20 fulfill its contractual obligations.

21 (2) Placed under an order of rehabilitation or conservation by
22 a court of competent jurisdiction.

23 (i) “Fund” means the California Small Group Reinsurance Fund.

24 (j) “Health benefit plan” means a policy or contract written or
25 administered by a carrier that arranges or provides health care
26 benefits for the covered eligible employees of a small employer
27 and their dependents. The term does not include accident only,
28 credit, disability income, coverage of Medicare services pursuant
29 to contracts with the United States government, Medicare
30 supplement, long-term care insurance, dental, vision, coverage
31 issued as a supplement to liability insurance, automobile medical
32 payment insurance, or insurance under which benefits are payable
33 with or without regard to fault and that is statutorily required to
34 be contained in any liability insurance policy or equivalent
35 self-insurance.

36 (k) “In force business” means an existing health benefit plan
37 issued by the carrier to a small employer.

38 (l) “Late enrollee” means an eligible employee or dependent
39 who has declined health coverage under a health benefit plan
40 offered by a small employer at the time of the initial enrollment

1 period provided under the terms of the health benefit plan and who
2 subsequently requests enrollment in a health benefit plan of that
3 small employer, provided that the initial enrollment period shall
4 be a period of at least 30 days. It also means any member of an
5 association that is a guaranteed association as well as any other
6 person eligible to purchase through the guaranteed association
7 when that person has failed to purchase coverage during the initial
8 enrollment period provided under the terms of the guaranteed
9 association's health benefit plan and who subsequently requests
10 enrollment in the plan, provided that the initial enrollment period
11 shall be a period of at least 30 days. However, an eligible
12 employee, another person eligible for coverage through a
13 guaranteed association pursuant to subdivision (z), or an eligible
14 dependent shall not be considered a late enrollee if any of the
15 following is applicable:

16 (1) The individual meets all of the following requirements:

17 (A) He or she was covered under another employer health
18 benefit plan, the Healthy Families Program, the Access for Infants
19 and Mothers (AIM) Program, or the Medi-Cal program at the time
20 the individual was eligible to enroll.

21 (B) He or she certified at the time of the initial enrollment that
22 coverage under another employer health benefit plan, the Healthy
23 Families Program, the AIM Program, or the Medi-Cal program
24 was the reason for declining enrollment provided that, if the
25 individual was covered under another employer health plan, the
26 individual was given the opportunity to make the certification
27 required by this subdivision and was notified that failure to do so
28 could result in later treatment as a late enrollee.

29 (C) He or she has lost or will lose coverage under another
30 employer health benefit plan as a result of termination of
31 employment of the individual or of a person through whom the
32 individual was covered as a dependent, change in employment
33 status of the individual, or of a person through whom the individual
34 was covered as a dependent, the termination of the other plan's
35 coverage, cessation of an employer's contribution toward an
36 employee or dependent's coverage, death of the person through
37 whom the individual was covered as a dependent, legal separation,
38 or divorce; or he or she has lost or will lose coverage under the
39 Healthy Families Program, the AIM Program, or the Medi-Cal
40 program.

1 (D) He or she requests enrollment within 30 days after
2 termination of coverage or employer contribution toward coverage
3 provided under another employer health benefit plan, or requests
4 enrollment within 60 days after termination of Medi-Cal program
5 coverage, AIM Program coverage, or Healthy Families Program
6 coverage.

7 (2) The individual is employed by an employer who offers
8 multiple health benefit plans and the individual elects a different
9 plan during an open enrollment period.

10 (3) A court has ordered that coverage be provided for a spouse
11 or minor child under a covered employee's health benefit plan.

12 (4) (A) In the case of an eligible employee as defined in
13 paragraph (1) of subdivision (f), the carrier cannot produce a
14 written statement from the employer stating that the individual or
15 the person through whom an individual was eligible to be covered
16 as a dependent, prior to declining coverage, was provided with,
17 and signed acknowledgment of, an explicit written notice in
18 boldface type specifying that failure to elect coverage during the
19 initial enrollment period permits the carrier to impose, at the time
20 of the individual's later decision to elect coverage, an exclusion
21 from coverage for a period of 12 months as well as a six-month
22 preexisting condition exclusion unless the individual meets the
23 criteria specified in paragraph (1), (2), or (3).

24 (B) In the case of an eligible employee who is a guaranteed
25 association member, the plan cannot produce a written statement
26 from the guaranteed association stating that the association sent a
27 written notice in boldface type to all potentially eligible association
28 members at their last known address prior to the initial enrollment
29 period informing members that failure to elect coverage during
30 the initial enrollment period permits the plan to impose, at the time
31 of the member's later decision to elect coverage, an exclusion from
32 coverage for a period of 12 months as well as a six-month
33 preexisting condition exclusion unless the member can demonstrate
34 that he or she meets the requirements of subparagraphs (A), (C),
35 and (D) of paragraph (1) or meets the requirements of paragraph
36 (2) or (3).

37 (C) In the case of an employer or person who is not a member
38 of an association, was eligible to purchase coverage through a
39 guaranteed association, and did not do so, and would not be eligible
40 to purchase guaranteed coverage unless purchased through a

1 guaranteed association, the employer or person can demonstrate
2 that he or she meets the requirements of subparagraphs (A), (C),
3 and (D) of paragraph (1), or meets the requirements of paragraph
4 (2) or (3), or that he or she recently had a change in status that
5 would make him or her eligible and that application for coverage
6 was made within 30 days of the change.

7 (5) The individual is an employee or dependent who meets the
8 criteria described in paragraph (1) and was under a COBRA
9 continuation provision and the coverage under that provision has
10 been exhausted. For purposes of this section, the definition of
11 “COBRA” set forth in subdivision (e) of Section 10116.5 shall
12 apply.

13 (6) The individual is a dependent of an enrolled eligible
14 employee who has lost or will lose his or her coverage under the
15 Healthy Families Program, the AIM Program, or the Medi-Cal
16 program and requests enrollment within 60 days after termination
17 of that coverage.

18 (7) The individual is an eligible employee who previously
19 declined coverage under an employer health benefit plan and who
20 has subsequently acquired a dependent who would be eligible for
21 coverage as a dependent of the employee through marriage, birth,
22 adoption, or placement for adoption, and who enrolls for coverage
23 under that employer health benefit plan on his or her behalf and
24 on behalf of his or her dependent within 30 days following the
25 date of marriage, birth, adoption, or placement for adoption, in
26 which case the effective date of coverage shall be the first day of
27 the month following the date the completed request for enrollment
28 is received in the case of marriage, or the date of birth, or the date
29 of adoption or placement for adoption, whichever applies. Notice
30 of the special enrollment rights contained in this paragraph shall
31 be provided by the employer to an employee at or before the time
32 the employee is offered an opportunity to enroll in plan coverage.

33 (8) The individual is an eligible employee who has declined
34 coverage for himself or herself or his or her dependents during a
35 previous enrollment period because his or her dependents were
36 covered by another employer health benefit plan at the time of the
37 previous enrollment period. That individual may enroll himself or
38 herself or his or her dependents for plan coverage during a special
39 open enrollment opportunity if his or her dependents have lost or
40 will lose coverage under that other employer health benefit plan.

1 The special open enrollment opportunity shall be requested by the
2 employee not more than 30 days after the date that the other health
3 coverage is exhausted or terminated. Upon enrollment, coverage
4 shall be effective not later than the first day of the first calendar
5 month beginning after the date the request for enrollment is
6 received. Notice of the special enrollment rights contained in this
7 paragraph shall be provided by the employer to an employee at or
8 before the time the employee is offered an opportunity to enroll
9 in plan coverage.

10 (m) “New business” means a health benefit plan issued to a
11 small employer that is not the carrier’s in force business.

12 (n) “Participating carrier” means a carrier that has entered into
13 a contract with the program to provide health benefits coverage
14 under this part.

15 (o) “Plan of operation” means the plan of operation of the fund,
16 including articles, bylaws, and operating rules adopted by the fund
17 pursuant to Article 3 (commencing with Section 10719).

18 (p) “Program” means the Health Insurance Plan of California.

19 (q) “Preexisting condition provision” means a policy provision
20 that excludes coverage for charges or expenses incurred during a
21 specified period following the insured’s effective date of coverage,
22 as to a condition for which medical advice, diagnosis, care, or
23 treatment was recommended or received during a specified period
24 immediately preceding the effective date of coverage.

25 (r) “Creditable coverage” means:

26 (1) Any individual or group policy, contract, or program, that
27 is written or administered by a disability insurer, health care service
28 plan, fraternal benefits society, self-insured employer plan, or any
29 other entity, in this state or elsewhere, and that arranges or provides
30 medical, hospital, and surgical coverage not designed to supplement
31 other private or governmental plans. The term includes continuation
32 or conversion coverage but does not include accident only, credit,
33 coverage for onsite medical clinics, disability income, Medicare
34 supplement, long-term care, dental, vision, coverage issued as a
35 supplement to liability insurance, insurance arising out of a
36 workers’ compensation or similar law, automobile medical payment
37 insurance, or insurance under which benefits are payable with or
38 without regard to fault and that is statutorily required to be
39 contained in any liability insurance policy or equivalent
40 self-insurance.

1 (2) The federal Medicare Program pursuant to Title XVIII of
2 the federal Social Security Act (42 U.S.C. Sec. 1395 et seq.).

3 (3) The Medicaid Program pursuant to Title XIX of the federal
4 Social Security Act (42 U.S.C. Sec. 1396 et seq.).

5 (4) Any other publicly sponsored program, provided in this state
6 or elsewhere, of medical, hospital, and surgical care.

7 (5) 10 U.S.C. Chapter 55 (commencing with Section 1071)
8 (Civilian Health and Medical Program of the Uniformed Services
9 (CHAMPUS)).

10 (6) A medical care program of the Indian Health Service or of
11 a tribal organization.

12 (7) A state health benefits risk pool.

13 (8) A health plan offered under 5 U.S.C. Chapter 89
14 (commencing with Section 8901) (Federal Employees Health
15 Benefits Program (FEHBP)).

16 (9) A public health plan as defined in federal regulations
17 authorized by Section 2701(c)(1)(I) of the federal Public Health
18 Service Act, as amended by Public Law 104-191, the federal Health
19 Insurance Portability and Accountability Act of 1996.

20 (10) A health benefit plan under Section 5(e) of the federal
21 Peace Corps Act (22 U.S.C. Sec. 2504(e)).

22 (11) Any other creditable coverage as defined by subdivision
23 (c) of Section 2701 of Title XXVII of the federal Public Health
24 Service Act (42 U.S.C. Sec. 300gg(c)).

25 (s) “Rating period” means the period for which premium rates
26 established by a carrier are in effect and shall be no less than six
27 months.

28 (t) “Risk adjusted employee risk rate” means the rate determined
29 for an eligible employee of a small employer in a particular risk
30 category after applying the risk adjustment factor.

31 (u) “Risk adjustment factor” means the percent adjustment to
32 be applied equally to each standard employee risk rate for a
33 particular small employer, based upon any expected deviations
34 from standard claims. This factor may not be more than 120 percent
35 or less than 80 percent until July 1, 1996. Effective July 1, 1996,
36 this factor may not be more than 110 percent or less than 90
37 percent.

38 (v) “Risk category” means the following characteristics of an
39 eligible employee: age, geographic region, and family size of the

1 employee, plus the benefit plan design selected by the small
2 employer.

3 (1) No more than the following age categories may be used in
4 determining premium rates:

5 Under 30

6 30–39

7 40–49

8 50–54

9 55–59

10 60–64

11 65 and over

12 However, for the 65 and over age category, separate premium
13 rates may be specified depending upon whether coverage under
14 the health benefit plan will be primary or secondary to benefits
15 provided by the federal Medicare Program pursuant to Title XVIII
16 of the federal Social Security Act.

17 (2) Small employer carriers shall base rates to small employers
18 using no more than the following family size categories:

19 (A) Single.

20 (B) Married couple.

21 (C) One adult and child or children.

22 (D) Married couple and child or children.

23 (3) (A) In determining rates for small employers, a carrier that
24 operates statewide shall use no more than nine geographic regions
25 in the state, have no region smaller than an area in which the first
26 three digits of all its ZIP Codes are in common within a county,
27 and shall divide no county into more than two regions. Carriers
28 shall be deemed to be operating statewide if their coverage area
29 includes 90 percent or more of the state's population. Geographic
30 regions established pursuant to this section shall, as a group, cover
31 the entire state, and the area encompassed in a geographic region
32 shall be separate and distinct from areas encompassed in other
33 geographic regions. Geographic regions may be noncontiguous.

34 (B) In determining rates for small employers, a carrier that does
35 not operate statewide shall use no more than the number of
36 geographic regions in the state than is determined by the following
37 formula: the population, as determined in the last federal census,
38 of all counties which are included in their entirety in a carrier's
39 service area divided by the total population of the state, as
40 determined in the last federal census, multiplied by nine. The

1 resulting number shall be rounded to the nearest whole integer.
2 No region may be smaller than an area in which the first three
3 digits of all its ZIP Codes are in common within a county and no
4 county may be divided into more than two regions. The area
5 encompassed in a geographic region shall be separate and distinct
6 from areas encompassed in other geographic regions. Geographic
7 regions may be noncontiguous. No carrier shall have less than one
8 geographic area.

9 (w) “Small employer” means either of the following:

10 (1) Any person, proprietary or nonprofit firm, corporation,
11 partnership, public agency, or association that is actively engaged
12 in business or service that, on at least 50 percent of its working
13 days during the preceding calendar quarter, or preceding calendar
14 year, employed at least 2, but not more than 50, eligible employees,
15 the majority of whom were employed within this state, that was
16 not formed primarily for purposes of buying health insurance and
17 in which a bona fide employer-employee relationship exists. In
18 determining whether to apply the calendar quarter or calendar year
19 test, the insurer shall use the test that ensures eligibility if only one
20 test would establish eligibility. However, for purposes of
21 subdivisions (b) and (h) of Section 10705, the definition shall
22 include employers with at least three eligible employees until July
23 1, 1997, and two eligible employees thereafter. In determining the
24 number of eligible employees, companies that are affiliated
25 companies and that are eligible to file a combined income tax
26 return for purposes of state taxation shall be considered one
27 employer. Subsequent to the issuance of a health benefit plan to a
28 small employer pursuant to this chapter, and for the purpose of
29 determining eligibility, the size of a small employer shall be
30 determined annually. Except as otherwise specifically provided,
31 provisions of this chapter that apply to a small employer shall
32 continue to apply until the health benefit plan anniversary following
33 the date the employer no longer meets the requirements of this
34 definition. It includes any small employer as defined in this
35 paragraph who purchases coverage through a guaranteed
36 association, and any employer purchasing coverage for employees
37 through a guaranteed association.

38 (2) Any guaranteed association, as defined in subdivision (y),
39 that purchases health coverage for members of the association.

1 (x) “Standard employee risk rate” means the rate applicable to
2 an eligible employee in a particular risk category in a small
3 employer group.

4 (y) “Guaranteed association” means a nonprofit organization
5 comprised of a group of individuals or employers who associate
6 based solely on participation in a specified profession or industry,
7 accepting for membership any individual or employer meeting its
8 membership criteria which (1) includes one or more small
9 employers as defined in paragraph (1) of subdivision (w), (2) does
10 not condition membership directly or indirectly on the health or
11 claims history of any person, (3) uses membership dues solely for
12 and in consideration of the membership and membership benefits,
13 except that the amount of the dues shall not depend on whether
14 the member applies for or purchases insurance offered by the
15 association, (4) is organized and maintained in good faith for
16 purposes unrelated to insurance, (5) has been in active existence
17 on January 1, 1992, and for at least five years prior to that date,
18 (6) has been offering health insurance to its members for at least
19 five years prior to January 1, 1992, (7) has a constitution and
20 bylaws, or other analogous governing documents that provide for
21 election of the governing board of the association by its members,
22 (8) offers any benefit plan design that is purchased to all individual
23 members and employer members in this state, (9) includes any
24 member choosing to enroll in the benefit plan design offered to
25 the association provided that the member has agreed to make the
26 required premium payments, and (10) covers at least 1,000 persons
27 with the carrier with which it contracts. The requirement of 1,000
28 persons may be met if component chapters of a statewide
29 association contracting separately with the same carrier cover at
30 least 1,000 persons in the aggregate.

31 This subdivision applies regardless of whether a master policy
32 by an admitted insurer is delivered directly to the association or a
33 trust formed for or sponsored by an association to administer
34 benefits for association members.

35 For purposes of this subdivision, an association formed by a
36 merger of two or more associations after January 1, 1992, and
37 otherwise meeting the criteria of this subdivision shall be deemed
38 to have been in active existence on January 1, 1992, if its
39 predecessor organizations had been in active existence on January

1 1, 1992, and for at least five years prior to that date and otherwise
2 met the criteria of this subdivision.

3 (z) “Members of a guaranteed association” means any individual
4 or employer meeting the association’s membership criteria if that
5 person is a member of the association and chooses to purchase
6 health coverage through the association. At the association’s
7 discretion, it may also include employees of association members,
8 association staff, retired members, retired employees of members,
9 and surviving spouses and dependents of deceased members.
10 However, if an association chooses to include those persons as
11 members of the guaranteed association, the association must so
12 elect in advance of purchasing coverage from a plan. Health plans
13 may require an association to adhere to the membership
14 composition it selects for up to 12 months.

15 (aa) “Affiliation period” means a period that, under the terms
16 of the health benefit plan, must expire before health care services
17 under the plan become effective.

18 *SEC. 150.5. Section 226.6 of the Labor Code is amended to*
19 *read:*

20 226.6. Any employer who knowingly and intentionally violates
21 the provisions of Section 226-~~or 226.2~~, or any officer, agent,
22 employee, fiduciary, or other person who has the control, receipt,
23 custody, or disposal of, or pays, the wages due any employee, and
24 who knowingly and intentionally participates or aids in the
25 violation of any provision of Section 226-~~or 226.2~~ is guilty of a
26 misdemeanor and, upon conviction thereof, shall be fined not more
27 than one thousand dollars (\$1,000) or be imprisoned not to exceed
28 one year, or both, at the discretion of the court. That fine or
29 imprisonment, or both, shall be in addition to any other penalty
30 provided by law.

31 *SEC. 151. Section 273 of the Labor Code is amended to read:*

32 273. (a) The following definitions apply for purposes of this
33 section:

34 (1) “All activities relating to an adverse license or registration
35 action” includes, but is not limited to, all of the following which
36 occur as a result of a failure to comply with this section:

37 (A) Denial of a new application or a renewal application for
38 licensure or registration.

39 (B) Denial of reinstatement of a license or registration.

40 (C) Suspension of a license or registration.

(D) Assessment and recovery of civil penalties for knowingly providing false information in the statement required by paragraph (1) of subdivision (b).

(2) “Farm labor contractor” has the same meaning as set forth in Section 1682.

(3) “Final judgment issued by a court” means a judgment with respect to which all possibility of a direct attack, by way of appeal, motion for a new trial, or motion pursuant to Section 663 of the Code of Civil Procedure to vacate the judgment, has been exhausted and also includes any final arbitration award where the time to file a petition for a trial de novo or a petition to vacate or correct the arbitration award has expired, and no petition is pending.

(4) “Garment manufacturer” means a person engaged in garment manufacturing as described in Section 2671.

(5) “Involving unpaid wages” means all amounts required to be paid by a final judgment, order, or accord involving a failure of the licensee or registrant to pay required wages.

(6) “Licensee” has the same meaning as set forth in Section 1682.

(7) “Registrant” means a person who holds a valid and unrevoked garment manufacturer registration.

(b) (1) The Labor Commissioner shall require an applicant for any of the following to submit a statement as to whether the applicant has satisfied all requirements imposed by a final judgment issued by a court or by a final order issued by the Labor Commissioner or by an accord involving unpaid wages:

(A) Licensure as a farm labor contractor.

(B) Registration as a garment manufacturer.

(C) Renewal or reinstatement of a farm labor contractor license or a garment manufacturer registration.

(D) A change in the persons identified pursuant to Section 1689 or subparagraph (B) of paragraph (1) of subdivision (a) of Section 2675.

(2) A person who knowingly provides false information in the statement submitted pursuant to this subdivision shall be subject to a civil penalty of no less than one thousand dollars (\$1,000) and no more than twenty-five thousand dollars (\$25,000), in addition to any civil remedies available to the Labor Commissioner. The penalty shall be recovered by the Labor Commissioner as part of

a hearing relating to a denial of an application for a license or registration, a hearing relating to a denial of a renewal or reinstatement of a license or registration, a hearing to contest the civil penalties assessed under this section by the Labor Commissioner, or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and the attorneys thereof may proceed and act for and on behalf of the people in bringing these actions.

(c) Notwithstanding any other provision of law, the Labor Commissioner shall not approve an application described in subdivision (b) if the statement submitted with it shows that the applicant has failed to satisfy all requirements imposed by a final judgment issued by a court or by a final order issued by the Labor Commissioner or by an accord involving unpaid wages, as described in subdivision (b), unless the applicant submits either of the following to the Labor Commissioner:

(1) A bond or a cash deposit, in addition to any required by Section 240, 1684, 1688, 2675, or 2679, in an amount sufficient to guarantee payment of all amounts due under a final judgment issued by a court or under a final order issued by the Labor Commissioner involving unpaid wages.

(2) A notarized accord between the applicant and the other parties to the judgment, order, or accord demonstrating that the applicant has satisfied all requirements imposed by the judgment, order, or accord involving unpaid wages.

(d) Notwithstanding any other provision of law, if the Labor Commissioner determines after granting an application described in subdivision (b) that the applicant made a false representation on the statement he or she submitted, the Labor Commissioner shall suspend the farm labor contractor license or garment manufacturer registration effective on the date of its issuance, renewal, or reinstatement. The license or registration shall remain suspended until the applicant satisfies either of the following requirements:

(1) Documents to the satisfaction of the Labor Commissioner that he or she has satisfied all requirements imposed by a final judgment issued by a court or by a final order of the Labor Commissioner or by an accord involving unpaid wages.

(2) Files with the Labor Commissioner a notarized accord as described in paragraph (2) of subdivision (c).

(e) (1) A licensee or registrant shall notify the Labor Commissioner in writing within 90 days of the date of a final judgment issued by a court, a final order issued by the Labor Commissioner, or an accord that imposes on the licensee or registrant requirements involving unpaid wages. If the licensee or registrant fails to comply with this notification requirement, the Labor Commissioner shall suspend the license or registration on the date that the Labor Commissioner is informed, or is made aware of, the judgment, order, or accord. The suspension shall remain in effect until the licensee or registrant satisfies either of the requirements described in subdivision (d).

(2) A licensee or registrant who notifies the Labor Commissioner of a judgment, order, or accord pursuant to paragraph (1), shall file with the notice a bond or a cash deposit meeting the criteria of paragraph (1) of subdivision (c).

(f) (1) The Labor Commissioner may reduce the amount of a bond or cash deposit required by this section upon proof, to the satisfaction of the Labor Commissioner, of partial satisfaction of the requirements imposed by a final judgment issued by a court, a final order issued by the Labor Commissioner, or an accord involving unpaid wages. The Labor Commissioner shall not reduce the bond or cash deposit amount below the balance of the entire amount involving unpaid wages. Upon full satisfaction of the requirements involving unpaid wages, the Labor Commissioner may terminate the bond or cash deposit requirement.

(2) Notwithstanding paragraph (1), within one year from the date of filing the bond or cash deposit pursuant to paragraph (1) of subdivision (c) or paragraph (2) of subdivision (e), a licensee or registrant shall submit a notarized accord between the licensee or registrant and the other parties to the judgment, order, or accord demonstrating satisfaction of all requirements imposed by the judgment, order, or accord involving unpaid wages. The Labor Commissioner shall suspend the license or registration of a person who fails to file the notarized accord within that timeframe. Notwithstanding paragraph (1) of subdivision (c), a person who has failed to file a notarized accord within the timeframe required by this paragraph shall have his or her license or registration reinstated only after demonstrating that he or she has satisfied all requirements imposed by a final judgment, order, or accord involving unpaid wages. As an alternative to payment in full of

1 all debts involving unpaid wages, a person may submit a notarized
2 copy of an accord between the licensee or registrant and the other
3 parties to the accord.

4 (g) The failure of a licensee or registrant to maintain a bond
5 required by this section or to abide by all requirements imposed
6 on a licensee or registrant by an accord involving unpaid wages
7 between the licensee or registrant and the other parties to the accord
8 shall result in the automatic suspension of his or her license or
9 registration.

10 (h) (1) A licensee or registrant shall not allow a person who is
11 a judgment debtor in a final judgment issued by a court or in a
12 final order issued by the Labor Commissioner involving unpaid
13 wages that imposes requirements that have not been satisfied in
14 their entirety to serve in a capacity described in Section 1689 or
15 subparagraph (B) of paragraph (1) of subdivision (a) of Section
16 2675.

17 (2) The Labor Commissioner shall suspend the license of a farm
18 labor contractor or the registration of a garment manufacturer who
19 violates the provisions of paragraph (1). The Labor Commissioner
20 shall reinstate the license or registration upon the resignation of
21 the person named as a judgment debtor or complete satisfaction
22 of the unpaid wages requirements.

23 (i) A person whose license or registration is suspended pursuant
24 to this section, who is denied issuance or reinstatement of a license
25 or registration, or who has been assessed a civil penalty for
26 knowingly providing false information in the statement required
27 by paragraph (1) of subdivision (b) shall pay to the Labor
28 Commissioner all reasonable costs incurred by the Labor
29 Commissioner in all activities relating to the adverse license or
30 registration action, commencing with the first notice issued by the
31 Labor Commissioner that he or she has taken any adverse action
32 under this section relative to a license or registration. The Labor
33 Commissioner shall not reinstate a license or registration unless
34 the person has paid all costs assessed by the Labor Commissioner
35 or has entered into an accord with the Labor Commissioner that
36 establishes a payment plan.

37 (j) This section shall not apply to an applicant for a farm labor
38 contractor license or a garment manufacturer registration or to a
39 licensee or registrant when the unpaid wages, as described by this
40 section, have been discharged in a bankruptcy proceeding.

1 SEC. 152. Section 699.5 of the Military and Veterans Code is
2 amended to read:

3 699.5. (a) The department may assist every veteran of the
4 United States and the dependent or survivor of every veteran of
5 the United States in presenting and pursuing the claim as the
6 veteran, dependent, or survivor may have against the United States
7 arising out of war service and in establishing the veteran's,
8 dependent's, or survivor's right to any privilege, preference, care,
9 or compensation provided for by the laws of the United States or
10 of this state. The department may cooperate and, with the approval
11 of the Department of Finance, contract with any veterans service
12 organization, and pursuant to the contract may compensate the
13 organization for services within the scope of this section rendered
14 by it to any veteran or dependent or survivor of a veteran. The
15 contract shall not be made unless the department determines that,
16 owing to the confidential relationships involved and the necessity
17 of operating through agencies that the veterans, dependents, or
18 survivors involved will feel to be sympathetic toward their
19 problems, the services cannot satisfactorily be rendered otherwise
20 than through the agency of the veterans organization and that the
21 best interests of the veterans, dependents, or survivors involved
22 will be served if the contract is made.

23 (b) (1) The Legislature finds and declares that services provided
24 by veterans service organizations play an important role in the
25 department's responsibilities to assist veterans and their dependents
26 and survivors in presenting and pursuing claims against the United
27 States, and that it is an efficient and reasonable use of state funds
28 to provide compensation to veterans service organizations for these
29 services.

30 (2) The Legislature further finds and declares that paragraph
31 (1) shall not be implemented by using the General Fund until the
32 annual budget for county veterans service officers reaches a
33 minimum of five million dollars (\$5,000,000). This subdivision
34 shall not be construed to preclude the use of federal funding in
35 implementing these provisions.

36 (c) Veterans service organizations that elect to contract with the
37 department in accordance with this section shall document the
38 claims processed each year by the veterans service officers
39 employed by the veterans service organization at offices located

1 in California. The documentation shall be in accordance with
2 procedures established by the department.

3 (d) The department shall determine annually the amount of
4 monetary benefits paid to eligible veterans and their dependents
5 and survivors in the state as a result of the work of the veterans
6 service officers of the contracting organizations. Beginning on
7 January 1, 2006, the department shall, on or before January 1 of
8 each year, prepare and transmit its determination for the preceding
9 fiscal year to the Department of Finance and the Legislature. The
10 department shall also identify federal sources to support the efforts
11 of veterans service organizations pursuant to this section. The
12 Department of Finance shall review the department's determination
13 in time to use the information in the annual Budget Act for the
14 budget of the department for the next fiscal year.

15 (e) For purposes of this section:

16 (1) "Survivor" means any relation of a deceased veteran who
17 may be entitled to make a claim for any privilege, preference, care,
18 or compensation under the laws of the United States or this state
19 based upon the veteran's war service.

20 (2) "Veterans service officer" means an individual employed
21 by a veterans service organization and accredited by the United
22 States Department of Veterans Affairs to process and adjudicate
23 claims and other benefits for veterans and their dependents and
24 survivors.

25 (3) "Veterans service organization" means an organization that
26 meets all of the following criteria:

27 (A) Is formed by and for United States military veterans.

28 (B) Is chartered by the United States Congress.

29 (C) Has regularly maintained an established committee or
30 agency in a regional office of the United States Department of
31 Veterans Affairs in California rendering services to veterans and
32 their dependents and survivors.

33 SEC. 153. Section 290.011 of the Penal Code is amended to
34 read:

35 290.011. Every person who is required to register pursuant to
36 the act who is living as a transient shall be required to register for
37 the rest of his or her life as follows:

38 (a) He or she shall register, or reregister if the person has
39 previously registered, within five working days from release from
40 incarceration, placement or commitment, or release on probation,

1 pursuant to subdivision (b) of Section 290, except that if the person
2 previously registered as a transient less than 30 days from the date
3 of his or her release from incarceration, he or she does not need
4 to reregister as a transient until his or her next required 30-day
5 update of registration. If a transient convicted in another
6 jurisdiction enters the state, he or she shall register within five
7 working days of coming into California with the chief of police
8 of the city in which he or she is present or the sheriff of the county
9 if he or she is present in an unincorporated area or city that has no
10 police department. If a transient is not physically present in any
11 one jurisdiction for five consecutive working days, he or she shall
12 register in the jurisdiction in which he or she is physically present
13 on the fifth working day following release, pursuant to subdivision
14 (b) of Section 290. Beginning on or before the 30th day following
15 initial registration upon release, a transient shall reregister no less
16 than once every 30 days thereafter. A transient shall register with
17 the chief of police of the city in which he or she is physically
18 present within that 30-day period, or the sheriff of the county if
19 he or she is physically present in an unincorporated area or city
20 that has no police department, and additionally, with the chief of
21 police of a campus of the University of California, the California
22 State University, or community college if he or she is physically
23 present upon the campus or in any of its facilities. A transient shall
24 reregister no less than once every 30 days regardless of the length
25 of time he or she has been physically present in the particular
26 jurisdiction in which he or she reregisters. If a transient fails to
27 reregister within any 30-day period, he or she may be prosecuted
28 in any jurisdiction in which he or she is physically present.

29 (b) A transient who moves to a residence shall have five working
30 days within which to register at that address, in accordance with
31 subdivision (b) of Section 290. A person registered at a residence
32 address in accordance with that provision who becomes transient
33 shall have five working days within which to reregister as a
34 transient in accordance with subdivision (a).

35 (c) Beginning on his or her first birthday following registration,
36 a transient shall register annually, within five working days of his
37 or her birthday, to update his or her registration with the entities
38 described in subdivision (a). A transient shall register in whichever
39 jurisdiction he or she is physically present on that date. At the
40 30-day updates and the annual update, a transient shall provide

1 current information as required on the Department of Justice annual
2 update form, including the information described in paragraphs
3 (1) to (3), inclusive, of subdivision (a) of Section 290.015, and the
4 information specified in subdivision (d).

5 (d) A transient shall, upon registration and reregistration, provide
6 current information as required on the Department of Justice
7 registration forms, and shall also list the places where he or she
8 sleeps, eats, works, frequents, and engages in leisure activities. If
9 a transient changes or adds to the places listed on the form during
10 the 30-day period, he or she does not need to report the new place
11 or places until the next required reregistration.

12 (e) Failure to comply with the requirement of reregistering every
13 30 days following initial registration pursuant to subdivision (a)
14 shall be punished in accordance with subdivision (g) of Section
15 290.018. Failure to comply with any other requirement of this
16 section shall be punished in accordance with either subdivision
17 (a) or (b) of Section 290.018.

18 (f) A transient who moves out of state shall inform, in person,
19 the chief of police in the city in which he or she is physically
20 present, or the sheriff of the county if he or she is physically present
21 in an unincorporated area or city that has no police department,
22 within five working days, of his or her move out of state. The
23 transient shall inform that registering agency of his or her planned
24 destination, residence or transient location out of state, and any
25 plans he or she has to return to California, if known. The law
26 enforcement agency shall, within three days after receipt of this
27 information, forward a copy of the change of location information
28 to the Department of Justice. The department shall forward
29 appropriate registration data to the law enforcement agency having
30 local jurisdiction of the new place of residence or location.

31 (g) For purposes of the act, “transient” means a person who has
32 no residence. “Residence” means one or more addresses at which
33 a person regularly resides, regardless of the number of days or
34 nights spent there, such as a shelter or structure that can be located
35 by a street address, including, but not limited to, houses, apartment
36 buildings, motels, hotels, homeless shelters, and recreational and
37 other vehicles.

38 (h) The transient registrant’s duty to update his or her
39 registration no less than every 30 days shall begin with his or her

1 second transient update following the date this section became
2 effective.

3 SEC. 154. Section 293 of the Penal Code is amended to read:

4 293. (a) An employee of a law enforcement agency who
5 personally receives a report from a person, alleging that the person
6 making the report has been the victim of a sex offense, or was
7 forced to commit an act of prostitution because he or she is the
8 victim of human trafficking, as defined in Section 236.1, shall
9 inform that person that his or her name will become a matter of
10 public record unless he or she requests that it not become a matter
11 of public record, pursuant to Section 6254 of the Government
12 Code.

13 (b) A written report of an alleged sex offense shall indicate that
14 the alleged victim has been properly informed pursuant to
15 subdivision (a) and shall memorialize his or her response.

16 (c) A law enforcement agency shall not disclose to a person,
17 except the prosecutor, parole officers of the Department of
18 Corrections and Rehabilitation, hearing officers of the parole
19 authority, probation officers of county probation departments, or
20 other persons or public agencies where authorized or required by
21 law, the address of a person who alleges to be the victim of a sex
22 offense or who was forced to commit an act of prostitution because
23 he or she is the victim of human trafficking, as defined in Section
24 236.1.

25 (d) A law enforcement agency shall not disclose to a person,
26 except the prosecutor, parole officers of the Department of
27 Corrections and Rehabilitation, hearing officers of the parole
28 authority, probation officers of county probation departments, or
29 other persons or public agencies where authorized or required by
30 law, the name of a person who alleges to be the victim of a sex
31 offense or who was forced to commit an act of prostitution because
32 he or she is the victim of human trafficking, as defined in Section
33 236.1, if that person has elected to exercise his or her right pursuant
34 to this section and Section 6254 of the Government Code.

35 (e) For purposes of this section, sex offense means any crime
36 listed in paragraph (2) of subdivision (f) of Section 6254 of the
37 Government Code.

38 (f) Parole officers of the Department of Corrections and
39 Rehabilitation, hearing officers of the parole authority, and
40 probation officers of county probation departments shall be entitled

1 to receive information pursuant to subdivisions (c) and (d) only if
2 the person to whom the information pertains alleges that he or she
3 is the victim of a sex offense or was forced to commit an act of
4 prostitution because he or she is the victim of human trafficking,
5 as defined in Section 236.1, the alleged perpetrator of which is a
6 parolee who is alleged to have committed the offense while on
7 parole, or in the case of a county probation officer, the person who
8 is alleged to have committed the offense is a probationer or is
9 under investigation by a county probation department.

10 SEC. 155. Section 336.9 of the Penal Code is amended to read:

11 336.9. (a) Notwithstanding Section 337a, and except as
12 provided in subdivision (b), any person who, not for gain, hire, or
13 reward other than that at stake under conditions available to every
14 participant, knowingly participates in any of the ways specified in
15 paragraph (2), (3), (4), (5), or (6) of subdivision (a) of Section
16 337a in any bet, bets, wager, wagers, or betting pool or pools made
17 between the person and any other person or group of persons who
18 are not acting for gain, hire, or reward, other than that at stake
19 under conditions available to every participant, upon the result of
20 any lawful trial, or purported trial, or contest, or purported contest,
21 of skill, speed, or power of endurance of person or animal, or
22 between persons, animals, or mechanical apparatus, is guilty of
23 an infraction, punishable by a fine not to exceed two hundred fifty
24 dollars (\$250).

25 (b) Subdivision (a) does not apply to either of the following
26 situations:

27 (1) Any bet, bets, wager, wagers, or betting pool or pools made
28 online.

29 (2) Betting pools with more than two thousand five hundred
30 dollars (\$2,500) at stake.

31 SEC. 156. Section 597.5 of the Penal Code is amended to read:

32 597.5. (a) Any person who does any of the following is guilty
33 of a felony and is punishable by imprisonment in the state prison
34 for 16 months, or two or three years, or by a fine not to exceed
35 fifty thousand dollars (\$50,000), or by both that fine and
36 imprisonment:

37 (1) Owns, possesses, keeps, or trains any dog, with the intent
38 that the dog shall be engaged in an exhibition of fighting with
39 another dog.

(2) For amusement or gain, causes any dog to fight with another dog, or causes any dogs to injure each other.

(3) Permits any act in violation of paragraph (1) or (2) to be done on any premises under his or her charge or control, or aids or abets that act.

(b) Any person who is knowingly present, as a spectator, at any place, building, or tenement where preparations are being made for an exhibition of the fighting of dogs, with the intent to be present at those preparations, or is knowingly present at that exhibition or at any other fighting or injuring as described in paragraph (2) of subdivision (a), with the intent to be present at that exhibition, fighting, or injuring, is guilty of an offense punishable by imprisonment in a county jail not to exceed one year, or by a fine not to exceed five thousand dollars (\$5,000), or by both that imprisonment and fine.

(c) Nothing in this section shall prohibit any of the following:

(1) The use of dogs in the management of livestock, as defined by Section 14205 of the Food and Agricultural Code, by the owner of the livestock or his or her employees or agents or other persons in lawful custody thereof.

(2) The use of dogs in hunting as permitted by the Fish and Game Code, including, but not limited to, Sections 4002 and 4756, and by the rules and regulations of the Fish and Game Commission.

(3) The training of dogs or the use of equipment in the training of dogs for any purpose not prohibited by law.

SEC. 157. Section 626.10 of the Penal Code is amended to read:

626.10. (a) (1) Any person, except a duly appointed peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, a full-time paid peace officer of another state or the federal government who is carrying out official duties while in this state, a person summoned by any officer to assist in making arrests or preserving the peace while the person is actually engaged in assisting any officer, or a member of the military forces of this state or the United States who is engaged in the performance of his or her duties, who brings or possesses any dirk, dagger, ice pick, knife having a blade longer than 2 ½ inches, folding knife with a blade that locks into place, razor with an unguarded blade, taser, or stun gun, as defined in subdivision (a) of Section 244.5, any instrument that expels a metallic projectile, such as a BB or a

1 pellet, through the force of air pressure, CO₂ pressure, or spring
2 action, or any spot marker gun, upon the grounds of, or within,
3 any public or private school providing instruction in kindergarten
4 or any of grades 1 to 12, inclusive, is guilty of a public offense,
5 punishable by imprisonment in a county jail not exceeding one
6 year, or by imprisonment in the state prison.

7 (2) Any person, except a duly appointed peace officer as defined
8 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
9 2, a full-time paid peace officer of another state or the federal
10 government who is carrying out official duties while in this state,
11 a person summoned by any officer to assist in making arrests or
12 preserving the peace while the person is actually engaged in
13 assisting any officer, or a member of the military forces of this
14 state or the United States who is engaged in the performance of
15 his or her duties, who brings or possesses a razor blade or a box
16 cutter upon the grounds of, or within, any public or private school
17 providing instruction in kindergarten or any of grades 1 to 12,
18 inclusive, is guilty of a public offense, punishable by imprisonment
19 in a county jail not exceeding one year.

20 (b) Any person, except a duly appointed peace officer as defined
21 in Chapter 4.5 (commencing with Section 830) of Title 3 of Part
22 2, a full-time paid peace officer of another state or the federal
23 government who is carrying out official duties while in this state,
24 a person summoned by any officer to assist in making arrests or
25 preserving the peace while the person is actually engaged in
26 assisting any officer, or a member of the military forces of this
27 state or the United States who is engaged in the performance of
28 his or her duties, who brings or possesses any dirk, dagger, ice
29 pick, or knife having a fixed blade longer than 2½ inches upon
30 the grounds of, or within, any private university, the University of
31 California, the California State University, or the California
32 Community Colleges is guilty of a public offense, punishable by
33 imprisonment in a county jail not exceeding one year, or by
34 imprisonment in the state prison.

35 (c) Subdivisions (a) and (b) do not apply to any person who
36 brings or possesses a knife having a blade longer than 2½ inches,
37 a razor with an unguarded blade, a razor blade, or a box cutter
38 upon the grounds of, or within, a public or private school providing
39 instruction in kindergarten or any of grades 1 to 12, inclusive, or
40 any private university, state university, or community college at

1 the direction of a faculty member of the private university, state
2 university, or community college, or a certificated or classified
3 employee of the school for use in a private university, state
4 university, community college, or school-sponsored activity or
5 class.

6 (d) Subdivisions (a) and (b) do not apply to any person who
7 brings or possesses an ice pick, a knife having a blade longer than
8 2½ inches, a razor with an unguarded blade, a razor blade, or a
9 box cutter upon the grounds of, or within, a public or private school
10 providing instruction in kindergarten or any of grades 1 to 12,
11 inclusive, or any private university, state university, or community
12 college for a lawful purpose within the scope of the person's
13 employment.

14 (e) Subdivision (b) does not apply to any person who brings or
15 possesses an ice pick or a knife having a fixed blade longer than
16 2½ inches upon the grounds of, or within, any private university,
17 state university, or community college for lawful use in or around
18 a residence or residential facility located upon those grounds or
19 for lawful use in food preparation or consumption.

20 (f) Subdivision (a) does not apply to any person who brings an
21 instrument that expels a metallic projectile, such as a BB or a pellet,
22 through the force of air pressure, CO₂ pressure, or spring action,
23 or any spot marker gun, or any razor blade or box cutter upon the
24 grounds of, or within, a public or private school providing
25 instruction in kindergarten or any of grades 1 to 12, inclusive, if
26 the person has the written permission of the school principal or
27 his or her designee.

28 (g) Any certificated or classified employee or school peace
29 officer of a public or private school providing instruction in
30 kindergarten or any of grades 1 to 12, inclusive, may seize any of
31 the weapons described in subdivision (a), and any certificated or
32 classified employee or school peace officer of any private
33 university, state university, or community college may seize any
34 of the weapons described in subdivision (b), from the possession
35 of any person upon the grounds of, or within, the school if he or
36 she knows, or has reasonable cause to know, the person is
37 prohibited from bringing or possessing the weapon upon the
38 grounds of, or within, the school.

39 (h) As used in this section, "dirk" or "dagger" means a knife or
40 other instrument with or without a handguard that is capable of

1 ready use as a stabbing weapon that may inflict great bodily injury
2 or death.

3 (i) Any person who, without the written permission of the
4 college or university president or chancellor or his or her designee,
5 brings or possesses a less lethal weapon, as defined in Section
6 12601, or a stun gun, as defined in Section 12650, upon the grounds
7 of, or within, a public or private college or university campus is
8 guilty of a misdemeanor.

9 SEC. 158. Section 831.5 of the Penal Code is amended to read:

10 831.5. (a) As used in this section, a custodial officer is a public
11 officer, not a peace officer, employed by a law enforcement agency
12 of Fresno County, Kern County, Riverside County, San Diego
13 County, Santa Clara County, Stanislaus County, or a county having
14 a population of 425,000 or less who has the authority and
15 responsibility for maintaining custody of prisoners and performs
16 tasks related to the operation of a local detention facility used for
17 the detention of persons usually pending arraignment or upon court
18 order either for their own safekeeping or for the specific purpose
19 of serving a sentence therein. Custodial officers of a county shall
20 be employees of, and under the authority of, the sheriff, except in
21 counties in which the sheriff, as of July 1, 1993, is not in charge
22 of and the sole and exclusive authority to keep the county jail and
23 the prisoners in it. A custodial officer includes a person designated
24 as a correctional officer, jailer, or other similar title. The duties of
25 a custodial officer may include the serving of warrants, court
26 orders, writs, and subpoenas in the detention facility or under
27 circumstances arising directly out of maintaining custody of
28 prisoners and related tasks.

29 (b) A custodial officer has no right to carry or possess firearms
30 in the performance of his or her prescribed duties, except, under
31 the direction of the sheriff or chief of police, while engaged in
32 transporting prisoners; guarding hospitalized prisoners; or
33 suppressing jail riots, lynchings, escapes, or rescues in or about a
34 detention facility falling under the care and custody of the sheriff
35 or chief of police.

36 (c) Each person described in this section as a custodial officer
37 shall, within 90 days following the date of the initial assignment
38 to that position, satisfactorily complete the training course specified
39 in Section 832. In addition, each person designated as a custodial
40 officer shall, within one year following the date of the initial

1 assignment as a custodial officer, have satisfactorily met the
2 minimum selection and training standards prescribed by the
3 Corrections Standards Authority pursuant to Section 6035. Persons
4 designated as custodial officers, before the expiration of the 90-day
5 and one-year periods described in this subdivision, who have not
6 yet completed the required training, shall not carry or possess
7 firearms in the performance of their prescribed duties, but may
8 perform the duties of a custodial officer only while under the direct
9 supervision of a peace officer, as described in Section 830.1, who
10 has completed the training prescribed by the Commission on Peace
11 Officer Standards and Training, or a custodial officer who has
12 completed the training required in this section.

13 (d) At any time 20 or more custodial officers are on duty, there
14 shall be at least one peace officer, as described in Section 830.1,
15 on duty at the same time to supervise the performance of the
16 custodial officers.

17 (e) This section shall not be construed to confer any authority
18 upon any custodial officer except while on duty.

19 (f) A custodial officer may use reasonable force in establishing
20 and maintaining custody of persons delivered to him or her by a
21 law enforcement officer; may make arrests for misdemeanors and
22 felonies within the local detention facility pursuant to a duly issued
23 warrant; may make warrantless arrests pursuant to Section 836.5
24 only during the duration of his or her job; may release without
25 further criminal process persons arrested for intoxication; and may
26 release misdemeanants on citation to appear in lieu of or after
27 booking.

28 (g) Custodial officers employed by the Santa Clara County
29 Department of Corrections are authorized to perform the following
30 additional duties in the facility:

31 (1) Arrest a person without a warrant whenever the custodial
32 officer has reasonable cause to believe that the person to be arrested
33 has committed a misdemeanor or felony in the presence of the
34 officer that is a violation of a statute or ordinance that the officer
35 has the duty to enforce.

36 (2) Search property, cells, prisoners, or visitors.

37 (3) Conduct strip or body cavity searches of prisoners pursuant
38 to Section 4030.

39 (4) Conduct searches and seizures pursuant to a duly issued
40 warrant.

1 (5) Segregate prisoners.

2 (6) Classify prisoners for the purpose of housing or participation
3 in supervised activities.

4 These duties may be performed at the Santa Clara Valley Medical
5 Center as needed and only as they directly relate to guarding
6 inpatient, in-custody inmates. This subdivision shall not be
7 construed to authorize the performance of any law enforcement
8 activity involving any person other than the inmate or his or her
9 visitors.

10 (h) Nothing in this section shall authorize a custodial officer to
11 carry or possess a firearm when the officer is not on duty.

12 (i) It is the intent of the Legislature that this section, as it relates
13 to Santa Clara County, enumerate specific duties of custodial
14 officers (known as “correctional officers” in Santa Clara County)
15 and to clarify the relationships of the correctional officers and
16 deputy sheriffs in Santa Clara County. These duties are the same
17 duties of the custodial officers prior to the date of enactment of
18 Chapter 635 of the Statutes of 1999 pursuant to local rules and
19 judicial decisions. It is further the intent of the Legislature that all
20 issues regarding compensation for custodial officers remain subject
21 to the collective bargaining process between the County of Santa
22 Clara and the authorized bargaining representative for the custodial
23 officers. However, nothing in this section shall be construed to
24 assert that the duties of custodial officers are equivalent to the
25 duties of deputy sheriffs nor to affect the ability of the county to
26 negotiate pay that reflects the different duties of custodial officers
27 and deputy sheriffs.

28 (j) This section shall become operative on January 1, 2003.

29 SEC. 159. Section 851.8 of the Penal Code is amended to read:

30 851.8. (a) In any case where a person has been arrested and
31 no accusatory pleading has been filed, the person arrested may
32 petition the law enforcement agency having jurisdiction over the
33 offense to destroy its records of the arrest. A copy of the petition
34 shall be served upon the prosecuting attorney of the county or city
35 having jurisdiction over the offense. The law enforcement agency
36 having jurisdiction over the offense, upon a determination that the
37 person arrested is factually innocent, shall, with the concurrence
38 of the prosecuting attorney, seal its arrest records, and the petition
39 for relief under this section for three years from the date of the
40 arrest and thereafter destroy its arrest records and the petition. The

1 law enforcement agency having jurisdiction over the offense shall
2 notify the Department of Justice, and any law enforcement agency
3 that arrested the petitioner or participated in the arrest of the
4 petitioner for an offense for which the petitioner has been found
5 factually innocent under this subdivision, of the sealing of the
6 arrest records and the reason therefor. The Department of Justice
7 and any law enforcement agency so notified shall forthwith seal
8 their records of the arrest and the notice of sealing for three years
9 from the date of the arrest, and thereafter destroy their records of
10 the arrest and the notice of sealing. The law enforcement agency
11 having jurisdiction over the offense and the Department of Justice
12 shall request the destruction of any records of the arrest which they
13 have given to any local, state, or federal agency or to any other
14 person or entity. Each agency, person, or entity within the State
15 of California receiving the request shall destroy its records of the
16 arrest and the request, unless otherwise provided in this section.

17 (b) If, after receipt by both the law enforcement agency and the
18 prosecuting attorney of a petition for relief under subdivision (a),
19 the law enforcement agency and prosecuting attorney do not
20 respond to the petition by accepting or denying the petition within
21 60 days after the running of the relevant statute of limitations or
22 within 60 days after receipt of the petition in cases where the statute
23 of limitations has previously lapsed, then the petition shall be
24 deemed to be denied. In any case where the petition of an arrestee
25 to the law enforcement agency to have an arrest record destroyed
26 is denied, petition may be made to the superior court that would
27 have had territorial jurisdiction over the matter. A copy of the
28 petition shall be served on the law enforcement agency and the
29 prosecuting attorney of the county or city having jurisdiction over
30 the offense at least 10 days prior to the hearing thereon. The
31 prosecuting attorney and the law enforcement agency through the
32 district attorney may present evidence to the court at the hearing.
33 Notwithstanding Section 1538.5 or 1539, any judicial determination
34 of factual innocence made pursuant to this section may be heard
35 and determined upon declarations, affidavits, police reports, or
36 any other evidence submitted by the parties which is material,
37 relevant, and reliable. A finding of factual innocence and an order
38 for the sealing and destruction of records pursuant to this section
39 shall not be made unless the court finds that no reasonable cause
40 exists to believe that the arrestee committed the offense for which

1 the arrest was made. In any court hearing to determine the factual
2 innocence of a party, the initial burden of proof shall rest with the
3 petitioner to show that no reasonable cause exists to believe that
4 the arrestee committed the offense for which the arrest was made.
5 If the court finds that this showing of no reasonable cause has been
6 made by the petitioner, then the burden of proof shall shift to the
7 respondent to show that a reasonable cause exists to believe that
8 the petitioner committed the offense for which the arrest was made.
9 If the court finds the arrestee to be factually innocent of the charges
10 for which the arrest was made, then the court shall order the law
11 enforcement agency having jurisdiction over the offense, the
12 Department of Justice, and any law enforcement agency which
13 arrested the petitioner or participated in the arrest of the petitioner
14 for an offense for which the petitioner has been found factually
15 innocent under this section to seal their records of the arrest and
16 the court order to seal and destroy the records, for three years from
17 the date of the arrest and thereafter to destroy their records of the
18 arrest and the court order to seal and destroy those records. The
19 court shall also order the law enforcement agency having
20 jurisdiction over the offense and the Department of Justice to
21 request the destruction of any records of the arrest which they have
22 given to any local, state, or federal agency, person or entity. Each
23 state or local agency, person or entity within the State of California
24 receiving such a request shall destroy its records of the arrest and
25 the request to destroy the records, unless otherwise provided in
26 this section. The court shall give to the petitioner a copy of any
27 court order concerning the destruction of the arrest records.

28 (c) In any case where a person has been arrested, and an
29 accusatory pleading has been filed, but where no conviction has
30 occurred, the defendant may, at any time after dismissal of the
31 action, petition the court that dismissed the action for a finding
32 that the defendant is factually innocent of the charges for which
33 the arrest was made. A copy of the petition shall be served on the
34 prosecuting attorney of the county or city in which the accusatory
35 pleading was filed at least 10 days prior to the hearing on the
36 petitioner's factual innocence. The prosecuting attorney may
37 present evidence to the court at the hearing. The hearing shall be
38 conducted as provided in subdivision (b). If the court finds the
39 petitioner to be factually innocent of the charges for which the

1 arrest was made, then the court shall grant the relief as provided
2 in subdivision (b).

3 (d) In any case where a person has been arrested and an
4 accusatory pleading has been filed, but where no conviction has
5 occurred, the court may, with the concurrence of the prosecuting
6 attorney, grant the relief provided in subdivision (b) at the time of
7 the dismissal of the accusatory pleading.

8 (e) Whenever any person is acquitted of a charge and it appears
9 to the judge presiding at the trial at which the acquittal occurred
10 that the defendant was factually innocent of the charge, the judge
11 may grant the relief provided in subdivision (b).

12 (f) In any case where a person who has been arrested is granted
13 relief pursuant to subdivision (a) or (b), the law enforcement agency
14 having jurisdiction over the offense or court shall issue a written
15 declaration to the arrestee stating that it is the determination of the
16 law enforcement agency having jurisdiction over the offense or
17 court that the arrestee is factually innocent of the charges for which
18 the person was arrested and that the arrestee is thereby exonerated.
19 Thereafter, the arrest shall be deemed not to have occurred and
20 the person may answer accordingly any question relating to its
21 occurrence.

22 (g) The Department of Justice shall furnish forms to be utilized
23 by persons applying for the destruction of their arrest records and
24 for the written declaration that one person was found factually
25 innocent under subdivisions (a) and (b).

26 (h) Documentation of arrest records destroyed pursuant to
27 subdivision (a), (b), (c), (d), or (e) that are contained in
28 investigative police reports shall bear the notation "Exonerated"
29 whenever reference is made to the arrestee. The arrestee shall be
30 notified in writing by the law enforcement agency having
31 jurisdiction over the offense of the sealing and destruction of the
32 arrest records pursuant to this section.

33 (i) (1) Any finding that an arrestee is factually innocent pursuant
34 to subdivision (a), (b), (c), (d), or (e) shall not be admissible as
35 evidence in any action.

36 (2) Notwithstanding paragraph (1), a finding that an arrestee is
37 factually innocent pursuant to subdivisions (a) to (e), inclusive,
38 shall be admissible as evidence at a hearing before the California
39 Victim Compensation and Government Claims Board.

1 (j) Destruction of records of arrest pursuant to subdivision (a),
2 (b), (c), (d), or (e) shall be accomplished by permanent obliteration
3 of all entries or notations upon the records pertaining to the arrest,
4 and the record shall be prepared again so that it appears that the
5 arrest never occurred. However, where (1) the only entries on the
6 record pertain to the arrest and (2) the record can be destroyed
7 without necessarily affecting the destruction of other records, then
8 the document constituting the record shall be physically destroyed.

9 (k) No records shall be destroyed pursuant to subdivision (a),
10 (b), (c), (d), or (e) if the arrestee or a codefendant has filed a civil
11 action against the peace officers or law enforcement jurisdiction
12 which made the arrest or instituted the prosecution and if the
13 agency which is the custodian of the records has received a certified
14 copy of the complaint in the civil action, until the civil action has
15 been resolved. Any records sealed pursuant to this section by the
16 court in the civil actions, upon a showing of good cause, may be
17 opened and submitted into evidence. The records shall be
18 confidential and shall be available for inspection only by the court,
19 jury, parties, counsel for the parties, and any other person
20 authorized by the court. Immediately following the final resolution
21 of the civil action, records subject to subdivision (a), (b), (c), (d),
22 or (e) shall be sealed and destroyed pursuant to subdivision (a),
23 (b), (c), (d), or (e).

24 (l) For arrests occurring on or after January 1, 1981, and for
25 accusatory pleadings filed on or after January 1, 1981, petitions
26 for relief under this section may be filed up to two years from the
27 date of the arrest or filing of the accusatory pleading, whichever
28 is later. Until January 1, 1983, petitioners can file for relief under
29 this section for arrests which occurred or accusatory pleadings
30 which were filed up to five years prior to the effective date of the
31 statute. Any time restrictions on filing for relief under this section
32 may be waived upon a showing of good cause by the petitioner
33 and in the absence of prejudice.

34 (m) Any relief which is available to a petitioner under this
35 section for an arrest shall also be available for an arrest which has
36 been deemed to be or described as a detention under Section 849.5
37 or 851.6.

38 (n) This section shall not apply to any offense which is classified
39 as an infraction.

(o) (1) This section shall be repealed on the effective date of a final judgment based on a claim under the California or United States Constitution holding that evidence that is relevant, reliable, and material may not be considered for purposes of a judicial determination of factual innocence under this section. For purposes of this subdivision, a judgment by the appellate division of a superior court is a final judgment if it is published and if it is not reviewed on appeal by a court of appeal. A judgment of a court of appeal is a final judgment if it is published and if it is not reviewed by the California Supreme Court.

(2) Any decision referred to in this subdivision shall be stayed pending appeal.

(3) If not otherwise appealed by a party to the action, any decision referred to in this subdivision which is a judgment by the appellate division of the superior court shall be appealed by the Attorney General.

(p) A judgment of the court under subdivision (b), (c), (d), or (e) is subject to the following appeal path:

(1) In a felony case, appeal is to the court of appeal.

(2) In a misdemeanor case, or in a case in which no accusatory pleading was filed, appeal is to the appellate division of the superior court.

SEC. 160. Section 1000.1 of the Penal Code is amended to read:

1000.1. (a) If the prosecuting attorney determines that this chapter may be applicable to the defendant, he or she shall advise the defendant and his or her attorney in writing of that determination. This notification shall include all of the following:

(1) A full description of the procedures for deferred entry of judgment.

(2) A general explanation of the roles and authorities of the probation department, the prosecuting attorney, the program, and the court in the process.

(3) A clear statement that in lieu of trial, the court may grant deferred entry of judgment with respect to any crime specified in subdivision (a) of Section 1000 that is charged, provided that the defendant pleads guilty to each of these charges and waives time for the pronouncement of judgment, and that upon the defendant's successful completion of a program, as specified in subdivision (c) of Section 1000, the positive recommendation of the program

1 authority and the motion of the prosecuting attorney, the court, or
2 the probation department, but no sooner than 18 months and no
3 later than three years from the date of the defendant's referral to
4 the program, the court shall dismiss the charge or charges against
5 the defendant.

6 (4) A clear statement that upon any failure of treatment or
7 condition under the program, or any circumstance specified in
8 Section 1000.3, the prosecuting attorney or the probation
9 department or the court on its own may make a motion to the court
10 for entry of judgment and the court shall render a finding of guilt
11 to the charge or charges pled, enter judgment, and schedule a
12 sentencing hearing as otherwise provided in this code.

13 (5) An explanation of criminal record retention and disposition
14 resulting from participation in the deferred entry of judgment
15 program and the defendant's rights relative to answering questions
16 about his or her arrest and deferred entry of judgment following
17 successful completion of the program.

18 (b) If the defendant consents and waives his or her right to a
19 speedy trial or a speedy preliminary hearing, the court may refer
20 the case to the probation department or the court may summarily
21 grant deferred entry of judgment if the defendant pleads guilty to
22 the charge or charges and waives time for the pronouncement of
23 judgment. When directed by the court, the probation department
24 shall make an investigation and take into consideration the
25 defendant's age, employment and service records, educational
26 background, community and family ties, prior controlled substance
27 use, treatment history, if any, demonstrable motivation, and other
28 mitigating factors in determining whether the defendant is a person
29 who would be benefited by education, treatment, or rehabilitation.
30 The probation department shall also determine which programs
31 the defendant would benefit from and which programs would
32 accept the defendant. The probation department shall report its
33 findings and recommendations to the court. The court shall make
34 the final determination regarding education, treatment, or
35 rehabilitation for the defendant. If the court determines that it is
36 appropriate, the court shall grant deferred entry of judgment if the
37 defendant pleads guilty to the charge or charges and waives time
38 for the pronouncement of judgment.

39 (c) No statement, or any information procured therefrom, made
40 by the defendant to any probation officer or drug treatment worker,

1 that is made during the course of any investigation conducted by
2 the probation department or treatment program pursuant to
3 subdivision (b), and prior to the reporting of the probation
4 department's findings and recommendations to the court, shall be
5 admissible in any action or proceeding brought subsequent to the
6 investigation.

7 No statement, or any information procured therefrom, with
8 respect to the specific offense with which the defendant is charged,
9 that is made to any probation officer or drug program worker
10 subsequent to the granting of deferred entry of judgment, shall be
11 admissible in any action or proceeding, including a sentencing
12 hearing.

13 (d) A defendant's plea of guilty pursuant to this chapter shall
14 not constitute a conviction for any purpose unless a judgment of
15 guilty is entered pursuant to Section 1000.3.

16 SEC. 161. Section 1120 of the Penal Code is amended to read:

17 1120. If a juror has any personal knowledge respecting a fact
18 in controversy in a cause, he or she must declare the same in open
19 court during the trial. If, during the retirement of the jury, a juror
20 declares a fact that could be evidence in the cause, as of his or her
21 own knowledge, the jury must return into court. In either of these
22 cases, the juror making the statement must be sworn as a witness
23 and examined in the presence of the parties in order that the court
24 may determine whether good cause exists for his or her discharge
25 as a juror.

26 SEC. 162. Section 1170 of the Penal Code, as amended by
27 Section 2 of Chapter 416 of the Statutes of 2008, is amended to
28 read:

29 1170. (a) (1) The Legislature finds and declares that the
30 purpose of imprisonment for crime is punishment. This purpose
31 is best served by terms proportionate to the seriousness of the
32 offense with provision for uniformity in the sentences of offenders
33 committing the same offense under similar circumstances. The
34 Legislature further finds and declares that the elimination of
35 disparity and the provision of uniformity of sentences can best be
36 achieved by determinate sentences fixed by statute in proportion
37 to the seriousness of the offense as determined by the Legislature
38 to be imposed by the court with specified discretion.

39 (2) Notwithstanding paragraph (1), the Legislature further finds
40 and declares that programs should be available for inmates,

1 including, but not limited to, educational programs, that are
2 designed to prepare nonviolent felony offenders for successful
3 reentry into the community. The Legislature encourages the
4 development of policies and programs designed to educate and
5 rehabilitate nonviolent felony offenders. In implementing this
6 section, the Department of Corrections and Rehabilitation is
7 encouraged to give priority enrollment in programs to promote
8 successful return to the community to an inmate with a short
9 remaining term of commitment and a release date that would allow
10 him or her adequate time to complete the program.

11 (3) In a case in which the punishment prescribed by statute for
12 a person convicted of a public offense is a term of imprisonment
13 in the state prison of any specification of three time periods, the
14 court shall sentence the defendant to one of the terms of
15 imprisonment specified unless the convicted person is given
16 another disposition provided by law, including a fine, jail,
17 probation, or the suspension of imposition or execution of sentence
18 or is sentenced pursuant to subdivision (b) of Section 1168 because
19 he or she had committed his or her crime prior to July 1, 1977. In
20 sentencing the convicted person, the court shall apply the
21 sentencing rules of the Judicial Council. The court, unless it
22 determines that there are circumstances in mitigation of the
23 punishment prescribed, shall also impose any other term that it is
24 required by law to impose as an additional term. This article does
25 not affect any provision of law that imposes the death penalty, that
26 authorizes or restricts the granting of probation or suspending the
27 execution or imposition of sentence, or expressly provides for
28 imprisonment in the state prison for life. In a case in which the
29 amount of preimprisonment credit under Section 2900.5 or another
30 provision of law is equal to or exceeds any sentence imposed
31 pursuant to this chapter, the entire sentence shall be deemed to
32 have been served and the defendant shall not be actually delivered
33 to the custody of the secretary. The court shall advise the defendant
34 that he or she shall serve a period of parole and order the defendant
35 to report to the parole office closest to the defendant's last legal
36 residence, unless the in-custody credits equal the total sentence,
37 including both confinement time and the period of parole. The
38 sentence shall be deemed a separate prior prison term under Section
39 667.5, and a copy of the judgment and other necessary
40 documentation shall be forwarded to the secretary.

(b) When a judgment of imprisonment is to be imposed and the statute specifies three possible terms, the court shall order imposition of the middle term, unless there are circumstances in aggravation or mitigation of the crime. At least four days prior to the time set for imposition of judgment, either party or the victim, or the family of the victim if the victim is deceased, may submit a statement in aggravation or mitigation to dispute facts in the record or the probation officer's report, or to present additional facts. In determining whether there are circumstances that justify imposition of the upper or lower term, the court may consider the record in the case, the probation officer's report, other reports including reports received pursuant to Section 1203.03 and statements in aggravation or mitigation submitted by the prosecution, the defendant, or the victim, or the family of the victim if the victim is deceased, and any further evidence introduced at the sentencing hearing. The court shall set forth on the record the facts and reasons for imposing the upper or lower term. The court shall not impose an upper term by using the fact of an enhancement upon which sentence is imposed under any provision of law. A term of imprisonment shall not be specified if imposition of sentence is suspended.

(c) The court shall state the reasons for its sentence choice on the record at the time of sentencing. The court also shall inform the defendant that as part of the sentence after expiration of the term he or she may be on parole for a period as provided in Section 3000.

(d) When a defendant subject to this section or subdivision (b) of Section 1168 has been sentenced to be imprisoned in the state prison and has been committed to the custody of the secretary, the court may, within 120 days of the date of commitment on its own motion, or at any time upon the recommendation of the secretary or the Board of Parole Hearings, recall the sentence and commitment previously ordered and resentence the defendant in the same manner as if he or she had not previously been sentenced, provided that the new sentence, if any, is no greater than the initial sentence. The resentence under this subdivision shall apply the sentencing rules of the Judicial Council to eliminate disparity of sentences and to promote uniformity of sentencing. Credit shall be given for time served.

1 (e) (1) Notwithstanding any other law and consistent with
2 paragraph (1) of subdivision (a), if the secretary or the Board of
3 Parole Hearings or both determine that a prisoner satisfies the
4 criteria set forth in paragraph (2), the secretary or the board may
5 recommend to the court that the prisoner's sentence be recalled.

6 (2) The court shall have the discretion to resentence or recall if
7 the court finds that the facts described in subparagraphs (A) and
8 (B) or subparagraphs (B) and (C) exist:

9 (A) The prisoner is terminally ill with an incurable condition
10 caused by an illness or disease that would produce death within
11 six months, as determined by a physician employed by the
12 department.

13 (B) The conditions under which the prisoner would be released
14 or receive treatment do not pose a threat to public safety.

15 (C) The prisoner is permanently medically incapacitated with
16 a medical condition that renders him or her permanently unable
17 to perform activities of basic daily living, and results in the prisoner
18 requiring 24-hour total care, including, but not limited to, coma,
19 persistent vegetative state, brain death, ventilator-dependency, or
20 loss of control of muscular or neurological function, and that
21 incapacitation did not exist at the time of the original sentencing.

22 The Board of Parole Hearings shall make findings pursuant to
23 this subdivision before making a recommendation for resentence
24 or recall to the court. This subdivision does not apply to a prisoner
25 sentenced to death or a term of life without the possibility of parole.

26 (3) Within 10 days of receipt of a positive recommendation by
27 the secretary or the board, the court shall hold a hearing to consider
28 whether the prisoner's sentence should be recalled.

29 (4) A physician employed by the department who determines
30 that a prisoner has six months or less to live shall notify the chief
31 medical officer of the prognosis. If the chief medical officer
32 concurs with the prognosis, he or she shall notify the warden.
33 Within 48 hours of receiving notification, the warden or the
34 warden's representative shall notify the prisoner of the recall and
35 resentencing procedures, and shall arrange for the prisoner to
36 designate a family member or other outside agent to be notified
37 as to the prisoner's medical condition and prognosis, and as to the
38 recall and resentencing procedures. If the inmate is deemed
39 mentally unfit, the warden or the warden's representative shall

1 contact the inmate's emergency contact and provide the information
2 described in paragraph (2).

3 (5) The warden or the warden's representative shall provide the
4 prisoner and his or her family member, agent, or emergency
5 contact, as described in paragraph (4), updated information
6 throughout the recall and resentencing process with regard to the
7 prisoner's medical condition and the status of the prisoner's recall
8 and resentencing proceedings.

9 (6) Notwithstanding any other provisions of this section, the
10 prisoner or his or her family member or designee may
11 independently request consideration for recall and resentencing
12 by contacting the chief medical officer at the prison or the
13 secretary. Upon receipt of the request, the chief medical officer
14 and the warden or the warden's representative shall follow the
15 procedures described in paragraph (4). If the secretary determines
16 that the prisoner satisfies the criteria set forth in paragraph (2), the
17 secretary or board may recommend to the court that the prisoner's
18 sentence be recalled. The secretary shall submit a recommendation
19 for release within 30 days in the case of inmates sentenced to
20 determinate terms and, in the case of inmates sentenced to
21 indeterminate terms, the secretary shall make a recommendation
22 to the Board of Parole Hearings with respect to the inmates who
23 have applied under this section. The board shall consider this
24 information and make an independent judgment pursuant to
25 paragraph (2) and make findings related thereto before rejecting
26 the request or making a recommendation to the court. This action
27 shall be taken at the next lawfully noticed board meeting.

28 (7) A recommendation for recall submitted to the court by the
29 secretary or the Board of Parole Hearings shall include one or more
30 medical evaluations, a postrelease plan, and findings pursuant to
31 paragraph (2).

32 (8) If possible, the matter shall be heard before the same judge
33 of the court who sentenced the prisoner.

34 (9) If the court grants the recall and resentencing application,
35 the prisoner shall be released by the department within 48 hours
36 of receipt of the court's order, unless a longer time period is agreed
37 to by the inmate. At the time of release, the warden or the warden's
38 representative shall ensure that the prisoner has each of the
39 following in his or her possession: a discharge medical summary,
40 full medical records, state identification, parole medications, and

1 all property belonging to the prisoner. After discharge, any
2 additional records shall be sent to the prisoner's forwarding
3 address.

4 (10) The secretary shall issue a directive to medical and
5 correctional staff employed by the department that details the
6 guidelines and procedures for initiating a recall and resentencing
7 procedure. The directive shall clearly state that any prisoner who
8 is given a prognosis of six months or less to live is eligible for
9 recall and resentencing consideration, and that recall and
10 resentencing procedures shall be initiated upon that prognosis.

11 (f) A sentence imposed under this article shall be subject to the
12 provisions of Sections 3000 and 3057 and other applicable
13 provisions of law.

14 (g) A sentence to state prison for a determinate term for which
15 only one term is specified, is a sentence to state prison under this
16 section.

17 (h) This section shall become operative on January 1, 2011.

18 SEC. 163. Section 1202.4 of the Penal Code is amended to
19 read:

20 1202.4. (a) (1) It is the intent of the Legislature that a victim
21 of crime who incurs any economic loss as a result of the
22 commission of a crime shall receive restitution directly from any
23 defendant convicted of that crime.

24 (2) Upon a person being convicted of any crime in the State of
25 California, the court shall order the defendant to pay a fine in the
26 form of a penalty assessment in accordance with Section 1464.

27 (3) The court, in addition to any other penalty provided or
28 imposed under the law, shall order the defendant to pay both of
29 the following:

30 (A) A restitution fine in accordance with subdivision (b).

31 (B) Restitution to the victim or victims, if any, in accordance
32 with subdivision (f), which shall be enforceable as if the order
33 were a civil judgment.

34 (b) In every case where a person is convicted of a crime, the
35 court shall impose a separate and additional restitution fine, unless
36 it finds compelling and extraordinary reasons for not doing so, and
37 states those reasons on the record.

38 (1) The restitution fine shall be set at the discretion of the court
39 and commensurate with the seriousness of the offense, but shall
40 not be less than two hundred dollars (\$200), and not more than ten

1 thousand dollars (\$10,000), if the person is convicted of a felony,
2 and shall not be less than one hundred dollars (\$100), and not more
3 than one thousand dollars (\$1,000), if the person is convicted of
4 a misdemeanor.

5 (2) In setting a felony restitution fine, the court may determine
6 the amount of the fine as the product of two hundred dollars (\$200)
7 multiplied by the number of years of imprisonment the defendant
8 is ordered to serve, multiplied by the number of felony counts of
9 which the defendant is convicted.

10 (c) The court shall impose the restitution fine unless it finds
11 compelling and extraordinary reasons for not doing so, and states
12 those reasons on the record. A defendant's inability to pay shall
13 not be considered a compelling and extraordinary reason not to
14 impose a restitution fine. Inability to pay may be considered only
15 in increasing the amount of the restitution fine in excess of the
16 two-hundred-dollar (\$200) or one-hundred-dollar (\$100) minimum.
17 The court may specify that funds confiscated at the time of the
18 defendant's arrest, except for funds confiscated pursuant to Section
19 11469 of the Health and Safety Code, be applied to the restitution
20 fine if the funds are not exempt for spousal or child support or
21 subject to any other legal exemption.

22 (d) In setting the amount of the fine pursuant to subdivision (b)
23 in excess of the two-hundred-dollar (\$200) or one-hundred-dollar
24 (\$100) minimum, the court shall consider any relevant factors
25 including, but not limited to, the defendant's inability to pay, the
26 seriousness and gravity of the offense and the circumstances of its
27 commission, any economic gain derived by the defendant as a
28 result of the crime, the extent to which any other person suffered
29 any losses as a result of the crime, and the number of victims
30 involved in the crime. Those losses may include pecuniary losses
31 to the victim or his or her dependents as well as intangible losses,
32 such as psychological harm caused by the crime. Consideration
33 of a defendant's inability to pay may include his or her future
34 earning capacity. A defendant shall bear the burden of
35 demonstrating his or her inability to pay. Express findings by the
36 court as to the factors bearing on the amount of the fine shall not
37 be required. A separate hearing for the fine shall not be required.

38 (e) The restitution fine shall not be subject to penalty
39 assessments authorized in Section 1464 of this code or Chapter 12
40 (commencing with Section 76000) of Title 8 of the Government

1 Code, or the state surcharge authorized in Section 1465.7 of this
2 code, and shall be deposited in the Restitution Fund in the State
3 Treasury.

4 (f) Except as provided in subdivisions (q) and (r), in every case
5 in which a victim has suffered economic loss as a result of the
6 defendant's conduct, the court shall require that the defendant
7 make restitution to the victim or victims in an amount established
8 by court order, based on the amount of loss claimed by the victim
9 or victims or any other showing to the court. If the amount of loss
10 cannot be ascertained at the time of sentencing, the restitution
11 order shall include a provision that the amount shall be determined
12 at the direction of the court. The court shall order full restitution
13 unless it finds compelling and extraordinary reasons for not doing
14 so, and states them on the record. The court may specify that funds
15 confiscated at the time of the defendant's arrest, except for funds
16 confiscated pursuant to Section 11469 of the Health and Safety
17 Code, be applied to the restitution order if the funds are not exempt
18 for spousal or child support or subject to any other legal exemption.

19 (1) The defendant has the right to a hearing before a judge to
20 dispute the determination of the amount of restitution. The court
21 may modify the amount, on its own motion or on the motion of
22 the district attorney, the victim or victims, or the defendant. If a
23 motion is made for modification of a restitution order, the victim
24 shall be notified of that motion at least 10 days prior to the
25 proceeding held to decide the motion.

26 (2) Determination of the amount of restitution ordered pursuant
27 to this subdivision shall not be affected by the indemnification or
28 subrogation rights of any third party. Restitution ordered pursuant
29 to this subdivision shall be ordered to be deposited to the
30 Restitution Fund to the extent that the victim, as defined in
31 subdivision (k), has received assistance from the Victim
32 Compensation Program pursuant to Chapter 5 (commencing with
33 Section 13950) of Part 4 of Division 3 of Title 2 of the Government
34 Code.

35 (3) To the extent possible, the restitution order shall be prepared
36 by the sentencing court, shall identify each victim and each loss
37 to which it pertains, and shall be of a dollar amount that is sufficient
38 to fully reimburse the victim or victims for every determined
39 economic loss incurred as the result of the defendant's criminal
40 conduct, including, but not limited to, all of the following:

1 (A) Full or partial payment for the value of stolen or damaged
2 property. The value of stolen or damaged property shall be the
3 replacement cost of like property, or the actual cost of repairing
4 the property when repair is possible.

5 (B) Medical expenses.

6 (C) Mental health counseling expenses.

7 (D) Wages or profits lost due to injury incurred by the victim,
8 and if the victim is a minor, wages or profits lost by the minor's
9 parent, parents, guardian, or guardians, while caring for the injured
10 minor. Lost wages shall include any commission income as well
11 as any base wages. Commission income shall be established by
12 evidence of commission income during the 12-month period prior
13 to the date of the crime for which restitution is being ordered,
14 unless good cause for a shorter time period is shown.

15 (E) Wages or profits lost by the victim, and if the victim is a
16 minor, wages or profits lost by the minor's parent, parents,
17 guardian, or guardians, due to time spent as a witness or in assisting
18 the police or prosecution. Lost wages shall include any commission
19 income as well as any base wages. Commission income shall be
20 established by evidence of commission income during the
21 12-month period prior to the date of the crime for which restitution
22 is being ordered, unless good cause for a shorter time period is
23 shown.

24 (F) Noneconomic losses, including, but not limited to,
25 psychological harm, for felony violations of Section 288.

26 (G) Interest, at the rate of 10 percent per annum, that accrues
27 as of the date of sentencing or loss, as determined by the court.

28 (H) Actual and reasonable attorney's fees and other costs of
29 collection accrued by a private entity on behalf of the victim.

30 (I) Expenses incurred by an adult victim in relocating away
31 from the defendant, including, but not limited to, deposits for
32 utilities and telephone service, deposits for rental housing,
33 temporary lodging and food expenses, clothing, and personal items.
34 Expenses incurred pursuant to this section shall be verified by law
35 enforcement to be necessary for the personal safety of the victim
36 or by a mental health treatment provider to be necessary for the
37 emotional well-being of the victim.

38 (J) Expenses to install or increase residential security incurred
39 related to a crime, as defined in subdivision (c) of Section 667.5,

1 including, but not limited to, a home security device or system, or
2 replacing or increasing the number of locks.

3 (K) Expenses to retrofit a residence or vehicle, or both, to make
4 the residence accessible to or the vehicle operational by the victim,
5 if the victim is permanently disabled, whether the disability is
6 partial or total, as a direct result of the crime.

7 (4) (A) If, as a result of the defendant's conduct, the Restitution
8 Fund has provided assistance to or on behalf of a victim or
9 derivative victim pursuant to Chapter 5 (commencing with Section
10 13950) of Part 4 of Division 3 of Title 2 of the Government Code,
11 the amount of assistance provided shall be presumed to be a direct
12 result of the defendant's criminal conduct and shall be included
13 in the amount of the restitution ordered.

14 (B) The amount of assistance provided by the Restitution Fund
15 shall be established by copies of bills submitted to the California
16 Victim Compensation and Government Claims Board reflecting
17 the amount paid by the board and whether the services for which
18 payment was made were for medical or dental expenses, funeral
19 or burial expenses, mental health counseling, wage or support
20 losses, or rehabilitation. Certified copies of these bills provided
21 by the board and redacted to protect the privacy and safety of the
22 victim or any legal privilege, together with a statement made under
23 penalty of perjury by the custodian of records that those bills were
24 submitted to and were paid by the board, shall be sufficient to meet
25 this requirement.

26 (C) If the defendant offers evidence to rebut the presumption
27 established by this paragraph, the court may release additional
28 information contained in the records of the board to the defendant
29 only after reviewing that information in camera and finding that
30 the information is necessary for the defendant to dispute the amount
31 of the restitution order.

32 (5) Except as provided in paragraph (6), in any case in which
33 an order may be entered pursuant to this subdivision, the defendant
34 shall prepare and file a disclosure identifying all assets, income,
35 and liabilities in which the defendant held or controlled a present
36 or future interest as of the date of the defendant's arrest for the
37 crime for which restitution may be ordered. The financial disclosure
38 statements shall be made available to the victim and the board
39 pursuant to Section 1214. The disclosure shall be signed by the
40 defendant upon a form approved or adopted by the Judicial Council

1 for the purpose of facilitating the disclosure. Any defendant who
2 willfully states as true any material matter that he or she knows to
3 be false on the disclosure required by this subdivision is guilty of
4 a misdemeanor, unless this conduct is punishable as perjury or
5 another provision of law provides for a greater penalty.

6 (6) A defendant who fails to file the financial disclosure required
7 in paragraph (5), but who has filed a financial affidavit or financial
8 information pursuant to subdivision (c) of Section 987, shall be
9 deemed to have waived the confidentiality of that affidavit or
10 financial information as to a victim in whose favor the order of
11 restitution is entered pursuant to subdivision (f). The affidavit or
12 information shall serve in lieu of the financial disclosure required
13 in paragraph (5), and paragraphs (7) to (10), inclusive, shall not
14 apply.

15 (7) Except as provided in paragraph (6), the defendant shall file
16 the disclosure with the clerk of the court no later than the date set
17 for the defendant's sentencing, unless otherwise directed by the
18 court. The disclosure may be inspected or copied as provided by
19 subdivision (b), (c), or (d) of Section 1203.05.

20 (8) In its discretion, the court may relieve the defendant of the
21 duty under paragraph (7) of filing with the clerk by requiring that
22 the defendant's disclosure be submitted as an attachment to, and
23 be available to, those authorized to receive the following:

24 (A) Any report submitted pursuant to subparagraph (C) of
25 paragraph (2) of subdivision (b) of Section 1203 or subdivision
26 (g) of Section 1203.

27 (B) Any stipulation submitted pursuant to paragraph (4) of
28 subdivision (b) of Section 1203.

29 (C) Any report by the probation officer, or any information
30 submitted by the defendant applying for a conditional sentence
31 pursuant to subdivision (d) of Section 1203.

32 (9) The court may consider a defendant's unreasonable failure
33 to make a complete disclosure pursuant to paragraph (5) as any of
34 the following:

35 (A) A circumstance in aggravation of the crime in imposing a
36 term under subdivision (b) of Section 1170.

37 (B) A factor indicating that the interests of justice would not be
38 served by admitting the defendant to probation under Section 1203.

1 (C) A factor indicating that the interests of justice would not be
2 served by conditionally sentencing the defendant under Section
3 1203.

4 (D) A factor indicating that the interests of justice would not
5 be served by imposing less than the maximum fine and sentence
6 fixed by law for the case.

7 (10) A defendant's failure or refusal to make the required
8 disclosure pursuant to paragraph (5) shall not delay entry of an
9 order of restitution or pronouncement of sentence. In appropriate
10 cases, the court may do any of the following:

11 (A) Require the defendant to be examined by the district attorney
12 pursuant to subdivision (h).

13 (B) If sentencing the defendant under Section 1170, provide
14 that the victim shall receive a copy of the portion of the probation
15 report filed pursuant to Section 1203.10 concerning the defendant's
16 employment, occupation, finances, and liabilities.

17 (C) If sentencing the defendant under Section 1203, set a date
18 and place for submission of the disclosure required by paragraph
19 (5) as a condition of probation or suspended sentence.

20 (11) If a defendant has any remaining unpaid balance on a
21 restitution order or fine 120 days prior to his or her scheduled
22 release from probation or 120 days prior to his or her completion
23 of a conditional sentence, the defendant shall prepare and file a
24 new and updated financial disclosure identifying all assets, income,
25 and liabilities in which the defendant holds or controls or has held
26 or controlled a present or future interest during the defendant's
27 period of probation or conditional sentence. The financial
28 disclosure shall be made available to the victim and the board
29 pursuant to Section 1214. The disclosure shall be signed and
30 prepared by the defendant on the same form as described in
31 paragraph (5). Any defendant who willfully states as true any
32 material matter that he or she knows to be false on the disclosure
33 required by this subdivision is guilty of a misdemeanor, unless
34 this conduct is punishable as perjury or another provision of law
35 provides for a greater penalty. The financial disclosure required
36 by this paragraph shall be filed with the clerk of the court no later
37 than 90 days prior to the defendant's scheduled release from
38 probation or completion of the defendant's conditional sentence.

39 (g) The court shall order full restitution unless it finds
40 compelling and extraordinary reasons for not doing so, and states

1 those reasons on the record. A defendant's inability to pay shall
2 not be considered a compelling and extraordinary reason not to
3 impose a restitution order, nor shall inability to pay be a
4 consideration in determining the amount of a restitution order.

5 (h) The district attorney may request an order of examination
6 pursuant to the procedures specified in Article 2 (commencing
7 with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part
8 2 of the Code of Civil Procedure, in order to determine the
9 defendant's financial assets for purposes of collecting on the
10 restitution order.

11 (i) A restitution order imposed pursuant to subdivision (f) shall
12 be enforceable as if the order were a civil judgment.

13 (j) The making of a restitution order pursuant to subdivision (f)
14 shall not affect the right of a victim to recovery from the Restitution
15 Fund as otherwise provided by law, except to the extent that
16 restitution is actually collected pursuant to the order. Restitution
17 collected pursuant to this subdivision shall be credited to any other
18 judgments for the same losses obtained against the defendant
19 arising out of the crime for which the defendant was convicted.

20 (k) For purposes of this section, "victim" shall include all of
21 the following:

22 (1) The immediate surviving family of the actual victim.

23 (2) Any corporation, business trust, estate, trust, partnership,
24 association, joint venture, government, governmental subdivision,
25 agency, or instrumentality, or any other legal or commercial entity
26 when that entity is a direct victim of a crime.

27 (3) Any person who has sustained economic loss as the result
28 of a crime and who satisfies any of the following conditions:

29 (A) At the time of the crime was the parent, grandparent, sibling,
30 spouse, child, or grandchild of the victim.

31 (B) At the time of the crime was living in the household of the
32 victim.

33 (C) At the time of the crime was a person who had previously
34 lived in the household of the victim for a period of not less than
35 two years in a relationship substantially similar to a relationship
36 listed in subparagraph (A).

37 (D) Is another family member of the victim, including, but not
38 limited to, the victim's fiancé or fiancée, and who witnessed the
39 crime.

40 (E) Is the primary caretaker of a minor victim.

1 (4) Any person who is eligible to receive assistance from the
2 Restitution Fund pursuant to Chapter 5 (commencing with Section
3 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

4 (5) Any governmental entity that is responsible for repairing,
5 replacing, or restoring public or privately owned property that has
6 been defaced with graffiti or other inscribed material, as defined
7 in subdivision (e) of Section 594, and that has sustained an
8 economic loss as the result of a violation of Section 594, 594.3,
9 594.4, 640.5, 640.6, or 640.7.

10 (l) At its discretion, the board of supervisors of any county may
11 impose a fee to cover the actual administrative cost of collecting
12 the restitution fine, not to exceed 10 percent of the amount ordered
13 to be paid, to be added to the restitution fine and included in the
14 order of the court, the proceeds of which shall be deposited in the
15 general fund of the county.

16 (m) In every case in which the defendant is granted probation,
17 the court shall make the payment of restitution fines and orders
18 imposed pursuant to this section a condition of probation. Any
19 portion of a restitution order that remains unsatisfied after a
20 defendant is no longer on probation shall continue to be enforceable
21 by a victim pursuant to Section 1214 until the obligation is
22 satisfied.

23 (n) If the court finds and states on the record compelling and
24 extraordinary reasons why a restitution fine or full restitution order
25 should not be required, the court shall order, as a condition of
26 probation, that the defendant perform specified community service,
27 unless it finds and states on the record compelling and
28 extraordinary reasons not to require community service in addition
29 to the finding that restitution should not be required. Upon
30 revocation of probation, the court shall impose restitution pursuant
31 to this section.

32 (o) The provisions of Section 13963 of the Government Code
33 shall apply to restitution imposed pursuant to this section.

34 (p) The court clerk shall notify the California Victim
35 Compensation and Government Claims Board within 90 days of
36 an order of restitution being imposed if the defendant is ordered
37 to pay restitution to the board due to the victim receiving
38 compensation from the Restitution Fund. Notification shall be
39 accomplished by mailing a copy of the court order to the board,
40 which may be done periodically by bulk mail or electronic mail.

(q) Upon conviction for a violation of Section 236.1, the court shall, in addition to any other penalty or restitution, order the defendant to pay restitution to the victim in any case in which a victim has suffered economic loss as a result of the defendant's conduct. The court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. In determining restitution pursuant to this section, the court shall base its order upon the greatest of the following: the gross value of the victim's labor or services based upon the comparable value of similar services in the labor market in which the offense occurred, the value of the victim's labor as guaranteed under California law, the actual income derived by the defendant from the victim's labor or services, or any other appropriate means to provide reparations to the victim.

(r) In addition to any other penalty or fine, the court shall order any person who has been convicted of any violation of Section 653h, 653s, 653u, or 653w to make restitution to any owner or lawful producer, or trade association acting on behalf of the owner or lawful producer, of a phonograph record, disc, wire, tape, film, or other device or article from which sounds or visual images are derived that suffered economic loss resulting from the violation. For the purpose of calculating restitution, the value of each nonconforming article or device shall be based on the aggregate wholesale value of lawfully manufactured and authorized devices or articles from which sounds or visual images are devised, unless a higher value can be proved in the case of (1) an unreleased audio work or (2) an audiovisual work that, at the time of unauthorized distribution, has not been made available in copies for sale to the general public in the United States on a digital versatile disc. The order of restitution shall also include reasonable costs incurred as a result of any investigation of the violation undertaken by the owner, lawful producer, or trade association acting on behalf of the owner or lawful producer. "Aggregate wholesale value" means the average wholesale value of lawfully manufactured and authorized sound or audiovisual recordings. Proof of the specific wholesale value of each nonconforming device or article is not required.

SEC. 164. Section 1202.8 of the Penal Code is amended to read:

1 1202.8. (a) Persons placed on probation by a court shall be
2 under the supervision of the county probation officer who shall
3 determine both the level and type of supervision consistent with
4 the court-ordered conditions of probation.

5 (b) Commencing January 1, 2009, every person who has been
6 assessed with the State Authorized Risk Assessment Tool for Sex
7 Offenders (SARATSO) pursuant to Sections 290.04 to 290.06,
8 inclusive, and who has a SARATSO risk level of high shall be
9 continuously electronically monitored while on probation, unless
10 the court determines that such monitoring is unnecessary for a
11 particular person. The monitoring device used for these purposes
12 shall be identified as one that employs the latest available proven
13 effective monitoring technology. Nothing in this section prohibits
14 probation authorities from using electronic monitoring technology
15 pursuant to any other provision of law.

16 (c) Within 30 days of a court making an order to provide
17 restitution to a victim or to the Restitution Fund, the probation
18 officer shall establish an account into which any restitution
19 payments that are not deposited into the Restitution Fund shall be
20 deposited.

21 (d) Beginning January 1, 2009, and every two years thereafter,
22 each probation department shall report to the Corrections Standards
23 Authority all relevant statistics and relevant information regarding
24 the effectiveness of continuous electronic monitoring of offenders
25 pursuant to subdivision (b). The report shall include the costs of
26 monitoring and the recidivism rates of those persons who have
27 been monitored. The Corrections Standards Authority shall compile
28 the reports and submit a single report to the Legislature and the
29 Governor every two years through 2017.

30 SEC. 165. Section 1203.098 of the Penal Code is amended to
31 read:

32 1203.098. (a) Unless otherwise provided, a person who works
33 as a facilitator in a batterers' intervention program that provides
34 programs for batterers pursuant to subdivision (c) of Section
35 1203.097 shall complete the following requirements before being
36 eligible to work as a facilitator in a batterers' intervention program:

37 (1) Forty hours of basic core training. A minimum of eight hours
38 of this instruction shall be provided by a shelter-based or
39 shelter-approved trainer. The core curriculum shall include the
40 following components:

1 (A) A minimum of eight hours in basic domestic violence
2 knowledge focusing on victim safety and the role of domestic
3 violence shelters in a community-coordinated response.

4 (B) A minimum of eight hours in multicultural, cross-cultural,
5 and multiethnic diversity and domestic violence.

6 (C) A minimum of four hours in substance abuse and domestic
7 violence.

8 (D) A minimum of four hours in intake and assessment,
9 including the history of violence and the nature of threats and
10 substance abuse.

11 (E) A minimum of eight hours in group content areas focusing
12 on gender roles and socialization, the nature of violence, the
13 dynamics of power and control, and the effects of abuse on children
14 and others as required by Section 1203.097.

15 (F) A minimum of four hours in group facilitation.

16 (G) A minimum of four hours in domestic violence and the law,
17 ethics, all requirements specified by the probation department
18 pursuant to Section 1203.097, and the role of batterers' intervention
19 programs in a coordinated-community response.

20 (H) Any person that provides documentation of coursework, or
21 equivalent training, that he or she has satisfactorily completed,
22 shall be exempt from that part of the training that was covered by
23 the satisfactorily completed coursework.

24 (I) The coursework that this person performs shall count toward
25 the continuing education requirement.

26 (2) Fifty-two weeks or no less than 104 hours in six months, as
27 a trainee in an approved batterers' intervention program with a
28 minimum of a two-hour group each week. A training program
29 shall include at least one of the following:

30 (A) Cofacilitation internship in which an experienced facilitator
31 is present in the room during the group session.

32 (B) Observation by a trainer of the trainee conducting a group
33 session via a one-way mirror.

34 (C) Observation by a trainer of the trainee conducting a group
35 session via a video or audio recording.

36 (D) Consultation or supervision twice a week in a six-month
37 program or once a week in a 52-week program.

38 (3) An experienced facilitator is one who has the following
39 qualifications:

1 (A) Documentation on file, approved by the agency, evidencing
2 that the experienced facilitator has the skills needed to provide
3 quality supervision and training.

4 (B) Documented experience working with batterers for three
5 years, and a minimum of two years working with batterers' groups.

6 (C) Documentation by January 1, 2003, of coursework or
7 equivalent training that demonstrates satisfactory completion of
8 the 40-hour basic core training.

9 (b) A facilitator of a batterers' intervention program shall
10 complete, as a minimum continuing education requirement, 16
11 hours annually of continuing education in either domestic violence
12 or a related field with a minimum of eight hours in domestic
13 violence.

14 (c) A person or agency with a specific hardship may request the
15 probation department, in writing, for an extension of time to
16 complete the training or to complete alternative training options.

17 (d) (1) An experienced facilitator, as defined in paragraph (3)
18 of subdivision (a), is not subject to the supervision requirements
19 of this section, if he or she meets the requirements of subparagraph
20 (C) of paragraph (3) of subdivision (a).

21 (2) This section does not apply to a person who provides
22 batterers' treatment through a jail education program if the person
23 in charge of that program determines that the person providing
24 treatment has adequate education or training in domestic violence
25 or a related field.

26 (e) A person who satisfactorily completes the training
27 requirements of a county probation department whose training
28 program is equivalent to or exceeds the training requirements of
29 this act shall be exempt from the training requirements of this act.

30 SEC. 166. Section 1203.4 of the Penal Code is amended to
31 read:

32 1203.4. (a) In any case in which a defendant has fulfilled the
33 conditions of probation for the entire period of probation, or has
34 been discharged prior to the termination of the period of probation,
35 or in any other case in which a court, in its discretion and the
36 interests of justice, determines that a defendant should be granted
37 the relief available under this section, the defendant shall, at any
38 time after the termination of the period of probation, if he or she
39 is not then serving a sentence for any offense, on probation for
40 any offense, or charged with the commission of any offense, be

1 permitted by the court to withdraw his or her plea of guilty or plea
2 of nolo contendere and enter a plea of not guilty; or, if he or she
3 has been convicted after a plea of not guilty, the court shall set
4 aside the verdict of guilty; and, in either case, the court shall
5 thereupon dismiss the accusations or information against the
6 defendant and except as noted below, he or she shall thereafter be
7 released from all penalties and disabilities resulting from the
8 offense of which he or she has been convicted, except as provided
9 in Section 13555 of the Vehicle Code. The probationer shall be
10 informed, in his or her probation papers, of this right and privilege
11 and his or her right, if any, to petition for a certificate of
12 rehabilitation and pardon. The probationer may make the
13 application and change of plea in person or by attorney, or by the
14 probation officer authorized in writing. However, in any subsequent
15 prosecution of the defendant for any other offense, the prior
16 conviction may be pleaded and proved and shall have the same
17 effect as if probation had not been granted or the accusation or
18 information dismissed. The order shall state, and the probationer
19 shall be informed, that the order does not relieve him or her of the
20 obligation to disclose the conviction in response to any direct
21 question contained in any questionnaire or application for public
22 office, for licensure by any state or local agency, or for contracting
23 with the California State Lottery Commission.

24 Dismissal of an accusation or information pursuant to this section
25 does not permit a person to own, possess, or have in his or her
26 custody or control any firearm or prevent his or her conviction
27 under Section 12021.

28 Dismissal of an accusation or information underlying a
29 conviction pursuant to this section does not permit a person
30 prohibited from holding public office as a result of that conviction
31 to hold public office.

32 This subdivision shall apply to all applications for relief under
33 this section which are filed on or after November 23, 1970.

34 (b) Subdivision (a) of this section does not apply to any
35 misdemeanor that is within the provisions of Section 42002.1 of
36 the Vehicle Code, to any violation of subdivision (c) of Section
37 286, Section 288, subdivision (c) of Section 288a, Section 288.5,
38 or subdivision (j) of Section 289, any felony conviction pursuant
39 to subdivision (d) of Section 261.5, or to any infraction.

1 (c) (1) Except as provided in paragraph (2), subdivision (a)
2 does not apply to a person who receives a notice to appear or is
3 otherwise charged with a violation of an offense described in
4 subdivisions (a) to (e), inclusive, of Section 12810 of the Vehicle
5 Code.

6 (2) If a defendant who was convicted of a violation listed in
7 paragraph (1) petitions the court, the court in its discretion and in
8 the interests of justice may order the relief provided pursuant to
9 subdivision (a) to that defendant.

10 (d) A person who petitions for a change of plea or setting aside
11 of a verdict under this section may be required to reimburse the
12 court for the actual costs of services rendered, whether or not the
13 petition is granted and the records are sealed or expunged, at a rate
14 to be determined by the court not to exceed one hundred fifty
15 dollars (\$150), and to reimburse the county for the actual costs of
16 services rendered, whether or not the petition is granted and the
17 records are sealed or expunged, at a rate to be determined by the
18 county board of supervisors not to exceed one hundred fifty dollars
19 (\$150), and to reimburse any city for the actual costs of services
20 rendered, whether or not the petition is granted and the records are
21 sealed or expunged, at a rate to be determined by the city council
22 not to exceed one hundred fifty dollars (\$150). Ability to make
23 this reimbursement shall be determined by the court using the
24 standards set forth in paragraph (2) of subdivision (g) of Section
25 987.8 and shall not be a prerequisite to a person's eligibility under
26 this section. The court may order reimbursement in any case in
27 which the petitioner appears to have the ability to pay, without
28 undue hardship, all or any portion of the costs for services
29 established pursuant to this subdivision.

30 (e) Relief shall not be granted under this section unless the
31 prosecuting attorney has been given 15 days' notice of the petition
32 for relief. The probation officer shall notify the prosecuting attorney
33 when a petition is filed, pursuant to this section.

34 It shall be presumed that the prosecuting attorney has received
35 notice if proof of service is filed with the court.

36 (f) If, after receiving notice pursuant to subdivision (e), the
37 prosecuting attorney fails to appear and object to a petition for
38 dismissal, the prosecuting attorney may not move to set aside or
39 otherwise appeal the grant of that petition.

(g) Notwithstanding the above provisions or any other provision of law, the Governor shall have the right to pardon a person convicted of a violation of subdivision (c) of Section 286, Section 288, subdivision (c) of Section 288a, Section 288.5, or subdivision (j) of Section 289, if there are extraordinary circumstances.

SEC. 167. Chapter 3 (commencing with Section 1228) of Title 8 of Part 2 of the Penal Code, as added by Section 36 of Chapter 28 of the 3rd Extraordinary Session of the Statutes of 2009, is repealed.

SEC. 168. Section 1229 of the Penal Code, as added by Section 2 of Chapter 608 of the Statutes of 2009, is amended to read:

1229. As used in this chapter, the following definitions apply:

(a) “Community corrections” means the placement of persons convicted of a felony offense under probation supervision, with conditions imposed by a court for a specified period.

(b) “Chief probation officer” or “CPO” means the chief probation officer for the county or city and county in which an adult offender is subject to probation for the conviction of a felony offense.

(c) “Community corrections program” means a program established pursuant to this act consisting of a system of felony probation supervision services dedicated to all of the following goals:

(1) Enhancing public safety through the management and reduction of offender risk while under felony probation supervision and upon reentry from jail into the community.

(2) Providing a range of probation supervision tools, sanctions, and services applied to felony probationers based on a risk and needs assessment for the purpose of reducing criminal conduct and promoting behavioral change that results in reducing recidivism and promoting the successful reintegration of offenders into the community.

(3) Maximizing offender restitution, reconciliation, and restorative services to victims of crime.

(4) Holding offenders accountable for their criminal behaviors and for successful compliance with applicable court orders and conditions of supervision.

(5) Improving public safety outcomes for persons placed on probation for a felony offense, as measured by their successful completion of probation and the commensurate reduction in the

1 rate of felony probationers sent to prison as a result of a probation
2 revocation or conviction of a new crime.

3 (d) “Evidence-based practices” refers to supervision policies,
4 procedures, programs, and practices demonstrated by scientific
5 research to reduce recidivism among individuals under probation,
6 parole, or postrelease supervision.

7 SEC. 169. Section 1230 of the Penal Code, as added by Section
8 2 of Chapter 608 of the Statutes of 2009, is amended to read:

9 1230. (a) Each county is hereby authorized to establish in each
10 county treasury a Community Corrections Performance Incentives
11 Fund (CCPIF), to receive all amounts allocated to that county for
12 purposes of implementing this chapter.

13 (b) In any fiscal year for which a county receives moneys to be
14 expended for the implementation of this chapter, the moneys,
15 including any interest, shall be made available to the CPO of that
16 county, within 30 days of the deposit of those moneys into the
17 fund, for the implementation of the community corrections program
18 authorized by this chapter.

19 (1) The community corrections program shall be developed and
20 implemented by probation and advised by a local Community
21 Corrections Partnership.

22 (2) The local Community Corrections Partnership shall be
23 chaired by the CPO and comprised of the following membership:

24 (A) The presiding judge of the superior court, or his or her
25 designee.

26 (B) A county supervisor or the chief administrative officer for
27 the county.

28 (C) The district attorney.

29 (D) The public defender.

30 (E) The sheriff.

31 (F) A chief of police.

32 (G) The head of the county department of social services.

33 (H) The head of the county department of mental health.

34 (I) The head of the county department of employment.

35 (J) The head of the county alcohol and substance abuse
36 programs.

37 (K) The head of the county office of education.

38 (L) A representative from a community-based organization with
39 experience in successfully providing rehabilitative services to
40 persons who have been convicted of a criminal offense.

1 (M) An individual who represents the interests of victims.

2 (3) Funds allocated to probation pursuant to this act shall be
3 used to provide supervision and rehabilitative services for adult
4 felony offenders subject to probation, and shall be spent on
5 evidence-based community corrections practices and programs,
6 as defined in subdivision (c) of Section 1229, which may include,
7 but are not limited to, the following:

8 (A) Implementing and expanding evidence-based risk and needs
9 assessments.

10 (B) Implementing and expanding intermediate sanctions that
11 include, but are not limited to, electronic monitoring, mandatory
12 community service, home detention, day reporting, restorative
13 justice programs, work furlough programs, and incarceration in
14 county jail for up to 90 days.

15 (C) Providing more intensive probation supervision.

16 (D) Expanding the availability of evidence-based rehabilitation
17 programs including, but not limited to, drug and alcohol treatment,
18 mental health treatment, anger management, cognitive behavior
19 programs, and job training and employment services.

20 (E) Evaluating the effectiveness of rehabilitation and supervision
21 programs and ensuring program fidelity.

22 (4) The CPO shall have discretion to spend funds on any of the
23 above practices and programs consistent with this act but, at a
24 minimum, shall devote at least 5 percent of all funding received
25 to evaluate the effectiveness of those programs and practices
26 implemented with the funds provided pursuant to this chapter. A
27 CPO may petition the Administrative Office of the Courts to have
28 this restriction waived, and the Administrative Office of the Courts
29 shall have the authority to grant such a petition, if the CPO can
30 demonstrate that the department is already devoting sufficient
31 funds to the evaluation of these programs and practices.

32 (5) Each probation department receiving funds under this chapter
33 shall maintain a complete and accurate accounting of all funds
34 received pursuant to this chapter.

35 SEC. 170. Section 1231 of the Penal Code, as added by Section
36 2 of Chapter 608 of the Statutes of 2009, is amended to read:

37 1231. (a) Community corrections programs funded pursuant
38 to this act shall identify and track specific outcome-based measures
39 consistent with the goals of this act.

1 (b) The Administrative Office of the Courts, in consultation
2 with the Chief Probation Officers of California, shall specify and
3 define minimum required outcome-based measures, which shall
4 include, but not be limited to, all of the following:

5 (1) The percentage of persons on felony probation who are being
6 supervised in accordance with evidence-based practices.

7 (2) The percentage of state moneys expended for programs that
8 are evidence-based, and a descriptive list of all programs that are
9 evidence-based.

10 (3) Specification of supervision policies, procedures, programs,
11 and practices that were eliminated.

12 (4) The percentage of persons on felony probation who
13 successfully complete the period of probation.

14 (c) Each CPO receiving funding pursuant to Sections 1233 to
15 1233.6, inclusive, shall provide an annual written report to the
16 Administrative Office of the Courts and the Department of
17 Corrections and Rehabilitation evaluating the effectiveness of the
18 community corrections program, including, but not limited to, the
19 data described in subdivision (b).

20 (d) The Administrative Office of the Courts shall, in consultation
21 with the CPO of each county and the Department of Corrections
22 and Rehabilitation, provide a quarterly statistical report to the
23 Department of Finance including, but not limited to, the following
24 statistical information for each county:

25 (1) The number of felony filings.

26 (2) The number of felony convictions.

27 (3) The number of felony convictions in which the defendant
28 was sentenced to the state prison.

29 (4) The number of felony convictions in which the defendant
30 was granted probation.

31 (5) The adult felon probation population.

32 (6) The number of felons who had their probation revoked and
33 were sent to prison for that revocation.

34 (7) The number of adult felony probationers sent to state prison
35 for a conviction of a new felony offense, including when probation
36 was revoked or terminated.

37 SEC. 171. Section 1233.1 of the Penal Code, as added by
38 Section 2 of Chapter 608 of the Statutes of 2009, is amended to
39 read:

1 1233.1. After the conclusion of each calendar year following
2 the enactment of this section, the Director of Finance, in
3 consultation with the Department of Corrections and Rehabilitation,
4 the Joint Legislative Budget Committee, the Chief Probation
5 Officers of California, and the Administrative Office of the Courts,
6 shall calculate the following for that calendar year:

7 (a) The cost to the state to incarcerate in prison and supervise
8 on parole a probationer sent to prison. This calculation shall take
9 into consideration factors including, but not limited to, the average
10 length of stay in prison and on parole for probationers, as well as
11 the associated parole revocation rates, and revocation costs.

12 (b) The statewide probation failure rate. The statewide probation
13 failure rate shall be calculated as the total number of adult felony
14 probationers statewide sent to prison in the previous year as a
15 percentage of the statewide adult felony probation population as
16 of June 30 of that year.

17 (c) The probation failure rate for each county. Each county's
18 probation failure rate shall be calculated as the number of adult
19 felony probationers sent to prison from that county in the previous
20 year as a percentage of the county's adult felony probation
21 population as of June 30 of that year.

22 (d) An estimate of the number of adult felony probationers each
23 county successfully prevented from being sent to prison. For each
24 county, this estimate shall be calculated based on the reduction in
25 the county's probation failure rate as calculated annually pursuant
26 to subdivision (c) of this section and the county's baseline
27 probation failure rate as calculated pursuant to Section 1233. In
28 making this estimate, the Director of Finance, in consultation with
29 the Department of Corrections and Rehabilitation, the Joint
30 Legislative Budget Committee, the Chief Probation Officers of
31 California, and the Administrative Office of the Courts, shall adjust
32 the calculations to account for changes in each county's adult
33 felony probation caseload in the most recent completed calendar
34 year as compared to the county's adult felony probation population
35 during the period 2006 to 2008, inclusive.

36 (e) In calculating probation failure rates for the state and
37 individual counties, the number of adult felony probationers sent
38 to prison shall include those adult felony probationers sent to state
39 prison for a revocation of probation, as well as adult felony
40 probationers sent to state prison for a conviction of a new felony

1 offense. The calculation shall also include adult felony probationers
2 who are sent to prison for conviction of a new crime and who
3 simultaneously have their probation terms terminated.

4 SEC. 172. Section 1233.7 of the Penal Code, as added by
5 Section 2 of Chapter 608 of the Statutes of 2009, is amended to
6 read:

7 1233.7. The moneys appropriated pursuant to this chapter shall
8 be used to supplement, not supplant, any other state or county
9 appropriation for a CPO or a probation department.

10 SEC. 173. Section 1463.23 of the Penal Code is amended to
11 read:

12 1463.23. Notwithstanding Section 1463, out of the moneys
13 deposited with the county treasurer pursuant to Section 1463, fifty
14 dollars (\$50) of each fine imposed pursuant to Section 4338 of the
15 Business and Professions Code; subdivision (c) of Section 11350,
16 subdivision (c) of Section 11377, or subdivision (d) of Section
17 11550 of the Health and Safety Code; or subdivision (b) of Section
18 264, subdivision (m) of Section 286, subdivision (m) of Section
19 288a, or Section 647.1 of this code, shall be deposited in a special
20 account in the county treasury which shall be used exclusively to
21 pay for the reasonable costs of establishing and providing for the
22 county, or any city within the county, an AIDS (acquired immune
23 deficiency syndrome) education program under the direction of
24 the county health department, in accordance with Chapter 2.71
25 (commencing with Section 1001.10) of Title 6, and for the costs
26 of collecting and administering funds received for purposes of this
27 section.

28 SEC. 174. Section 6126.1 of the Penal Code is amended to
29 read:

30 6126.1. (a) The Inspector General shall establish a certification
31 program for peace officers under the Inspector General's
32 jurisdiction. The peace officer training course shall be consistent
33 with the standard courses utilized by the Commission on Peace
34 Officer Standards and Training and other major investigative
35 offices, such as county sheriff and city police departments and the
36 Department of the California Highway Patrol.

37 (b) Beginning January 1, 1999, peace officers under the
38 Inspector General's jurisdiction conducting investigations for the
39 Office of the Inspector General shall complete investigation
40 training consistent with standard courses utilized by other major

1 law enforcement investigative offices and be certified within six
2 months of employment.

3 (c) Beginning January 1, 1999, all peace officers under the
4 Inspector General's jurisdiction shall successfully pass a
5 psychological screening exam before becoming employed with
6 the Office of the Inspector General.

7 SEC. 175. Section 6126.5 of the Penal Code is amended to
8 read:

9 6126.5. (a) Notwithstanding any other provision of law, the
10 Inspector General, during regular business hours or at any other
11 time determined necessary by the Inspector General, shall have
12 access to and authority to examine and reproduce any and all books,
13 accounts, reports, vouchers, correspondence files, documents, and
14 other records, and to examine the bank accounts, money, or other
15 property of the Department of Corrections and Rehabilitation for
16 any audit, investigation, inspection, or contemporaneous oversight.
17 Any officer or employee of any agency or entity having these
18 records or property in his or her possession or under his or her
19 control shall permit access to, and examination and reproduction
20 thereof consistent with the provisions of this section, upon the
21 request of the Inspector General or his or her authorized
22 representative.

23 (b) For the purpose of conducting any audit, investigation,
24 inspection, or contemporaneous oversight, the Inspector General
25 or his or her authorized representative shall have access to the
26 records and property of any public or private entity or person
27 subject to review or regulation by the public agency or public entity
28 being audited, investigated, or overseen to the same extent that
29 employees or officers of that agency or public entity have access.
30 No provision of law or any memorandum of understanding or any
31 other agreement entered into between the employing entity and
32 the employee or the employee's representative providing for the
33 confidentiality or privilege of any records or property shall prevent
34 disclosure pursuant to subdivision (a). Access, examination, and
35 reproduction consistent with the provisions of this section shall
36 not result in the waiver of any confidentiality or privilege regarding
37 any records or property.

38 (c) Any officer or person who fails or refuses to permit access,
39 examination, or reproduction, as required by this section, is guilty
40 of a misdemeanor.

1 (d) The Inspector General may require any employee of the
2 Department of Corrections and Rehabilitation to be interviewed
3 on a confidential basis. Any employee requested to be interviewed
4 shall comply and shall have time afforded by the appointing
5 authority for the purpose of an interview with the Inspector General
6 or his or her designee. The Inspector General shall have the
7 discretion to redact the name or other identifying information of
8 any person interviewed from any public report issued by the
9 Inspector General, where required by law or where the failure to
10 redact the information may hinder prosecution or an action in a
11 criminal, civil, or administrative proceeding, or where the Inspector
12 General determines that disclosure of the information is not in the
13 interests of justice. It is not the purpose of these communications
14 to address disciplinary action or grievance procedures that may
15 routinely occur. If it appears that the facts of the case could lead
16 to punitive action, the Inspector General shall be subject to Sections
17 3303, 3307, 3307.5, 3308, and 3309 of the Government Code as
18 if the Inspector General were the employer, except that the
19 Inspector General shall not be subject to the provisions of any
20 memorandum of understanding or other agreement entered into
21 between the employing entity and the employee or the employee's
22 representative that is in conflict with, or adds to the requirements
23 of, Sections 3303, 3307, 3307.5, 3308, and 3309 of the Government
24 Code.

25 SEC. 176. Section 6128 of the Penal Code is amended to read:

26 6128. (a) The Office of the Inspector General may receive
27 communications from any individual, including those employed
28 by any department, board, or authority who believes he or she may
29 have information that may describe an improper governmental
30 activity, as that term is defined in subdivision (b) of Section 8547.2
31 of the Government Code. It is not the purpose of these
32 communications to redress any single disciplinary action or
33 grievance that may routinely occur.

34 (b) In order to properly respond to any allegation of improper
35 governmental activity, the Inspector General shall establish a
36 toll-free public telephone number for the purpose of identifying
37 any alleged wrongdoing by an employee of the Department of
38 Corrections and Rehabilitation. This telephone number shall be
39 posted by the department in clear view of all employees and the
40 public. When appropriate, the Inspector General shall initiate an

1 investigation or audit of any alleged improper governmental
2 activity. However, any request to conduct an investigation shall
3 be in writing.

4 (c) All identifying information, and any personal papers or
5 correspondence from any person who initiated the investigation
6 shall not be disclosed, except in those cases where the Inspector
7 General determines that disclosure of the information is necessary
8 in the interests of justice.

9 SEC. 177. Section 6131 of the Penal Code is amended to read:

10 6131. (a) Upon the completion of any audit conducted by the
11 Inspector General, he or she shall prepare a written report, which
12 shall be disclosed, along with all underlying materials the Inspector
13 General deems appropriate, to the Governor, the Secretary of the
14 Department of Corrections and Rehabilitation, the appropriate
15 director, chairperson, or law enforcement agency, and the
16 Legislature. Copies of all those written reports shall be posted on
17 the Inspector General's Internet Web site within 10 days of being
18 disclosed to the above-listed entities or persons.

19 (b) Upon the completion of any investigation conducted by the
20 Inspector General, he or she shall prepare a complete written report,
21 which shall be held as confidential and disclosed in confidence,
22 along with all underlying investigative materials the Inspector
23 General deems appropriate, to the Governor, the Secretary of the
24 Department of Corrections and Rehabilitation, and the appropriate
25 director, chairperson, or law enforcement agency.

26 (c) Upon the completion of any investigation conducted by the
27 Inspector General, he or she shall also prepare and issue on a
28 quarterly basis a public investigative report that includes all
29 investigations completed in the previous quarter. The public
30 investigative report shall differ from the complete investigative
31 report in the respect that the Inspector General shall have the
32 discretion to redact or otherwise protect the names of individuals,
33 specific locations, or other facts that, if not redacted, might hinder
34 prosecution related to the investigation, or where disclosure of the
35 information is otherwise prohibited by law, and to decline to
36 produce any of the underlying investigative materials. In a case
37 where allegations were deemed to be unfounded, all applicable
38 identifying information shall be redacted. The public investigative
39 report shall be made available to the public upon request and on
40 a quarterly basis as follows:

1 (1) In those cases where an investigation is referred only for
2 disciplinary action before the State Personnel Board or for other
3 administrative proceedings, the employing entity shall, within 10
4 days of receipt of the State Personnel Board's order rendered in
5 other administrative proceedings, provide the Inspector General
6 with a copy of the order. The Inspector General shall attach the
7 order to the public investigative report on his or her Internet Web
8 site and provide copies of the report and order to the Legislature,
9 as well as to any complaining employee and any employee who
10 was the subject of the investigation.

11 (2) In those cases where the employing entity and the employee
12 against whom disciplinary action has been taken enter into a
13 settlement agreement concerning the disciplinary action, the
14 employing entity shall, within 10 days of the settlement agreement
15 becoming final, notify the Inspector General in writing of that fact
16 and shall describe what disciplinary action, if any, was ultimately
17 imposed on the employee. The Inspector General shall include the
18 settlement information in the public investigative report on his or
19 her Internet Web site and provide copies of the report to the
20 Legislature, as well as to any complaining employee and any
21 employee who was the subject of the investigation.

22 (3) In those cases where the employing entity declines to pursue
23 disciplinary action against an employee, the employing entity shall,
24 within 10 days of its decision, notify the Inspector General in
25 writing of its decision not to pursue disciplinary action, setting
26 forth the reasons for its decision. The Inspector General shall
27 include the decision and rationale in the public investigative report
28 on his or her Internet Web site and provide copies of the report to
29 the Legislature, as well as to any complaining employee and any
30 employee who was the subject of the investigation.

31 (4) In those cases where an investigation has been referred for
32 possible criminal prosecution, and the applicable local law
33 enforcement agency or the Attorney General has decided to
34 commence criminal proceedings against an employee, the report
35 shall be made public at a time deemed appropriate by the Inspector
36 General after consultation with the local law enforcement agency
37 or the Attorney General, but in all cases no later than when
38 discovery has been provided to the defendant in the criminal
39 proceedings. The Inspector General shall thereafter post the public
40 investigative report on his or her Internet Web site and provide

1 copies of the report to the Legislature, as well as to any
2 complaining employee and any employee who was the subject of
3 the investigation.

4 (5) In those cases where the local law enforcement agency or
5 the Attorney General declines to commence criminal proceedings
6 against an employee, the local law enforcement agency or the
7 Attorney General shall, within 30 days of reaching that decision,
8 notify the Inspector General of that fact. The Inspector General
9 shall include the decision in the public investigative report on his
10 or her Internet Web site and provide copies of the report to the
11 Legislature, as well as to any complaining employee and any
12 employee who was the subject of the investigation.

13 (6) In those cases where an investigation has been referred for
14 neither disciplinary action or other administrative proceedings,
15 nor for criminal prosecution, the Inspector General shall include
16 the decision not to refer the matter in the public investigative report
17 on his or her Internet Web site and provide copies of the report to
18 the Legislature, as well as to any complaining employee and any
19 employee who was the subject of the investigation.

20 SEC. 178. Section 11170 of the Penal Code is amended to read:

21 11170. (a) (1) The Department of Justice shall maintain an
22 index of all reports of child abuse and severe neglect submitted
23 pursuant to Section 11169. The index shall be continually updated
24 by the department and shall not contain any reports that are
25 determined to be unfounded. The department may adopt rules
26 governing recordkeeping and reporting pursuant to this article.

27 (2) The department shall act only as a repository of reports of
28 suspected child abuse and severe neglect to be maintained in the
29 Child Abuse Central Index pursuant to paragraph (1). The
30 submitting agencies are responsible for the accuracy, completeness,
31 and retention of the reports described in this section. The
32 department shall be responsible for ensuring that the Child Abuse
33 Central Index accurately reflects the report it receives from the
34 submitting agency.

35 (3) Information from an inconclusive or unsubstantiated report
36 filed pursuant to subdivision (a) of Section 11169 shall be deleted
37 from the Child Abuse Central Index after 10 years if no subsequent
38 report concerning the same suspected child abuser is received
39 within that time period. If a subsequent report is received within
40 that 10-year period, information from any prior report, as well as

any subsequently filed report, shall be maintained on the Child Abuse Central Index for a period of 10 years from the time the most recent report is received by the department.

(b) (1) The Department of Justice shall immediately notify an agency that submits a report pursuant to Section 11169, or a prosecutor who requests notification, of any information maintained pursuant to subdivision (a) that is relevant to the known or suspected instance of child abuse or severe neglect reported by the agency. The agency shall make that information available to the reporting health care practitioner who is treating a person reported as a possible victim of known or suspected child abuse. The agency shall make that information available to the reporting child custodian, Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem appointed under Rule 5.662 of the California Rules of Court, or counsel appointed under Section 317 or 318 of the Welfare and Institutions Code, or the appropriate licensing agency, if he or she or the licensing agency is handling or investigating a case of known or suspected child abuse or severe neglect.

(2) When a report is made pursuant to subdivision (a) of Section 11166, or Section 11166.05, the investigating agency, upon completion of the investigation or after there has been a final disposition in the matter, shall inform the person required or authorized to report of the results of the investigation and of any action the agency is taking with regard to the child or family.

(3) The Department of Justice shall make available to a law enforcement agency, county welfare department, or county probation department that is conducting a child abuse investigation relevant information contained in the index.

(4) The department shall make available to the State Department of Social Services, or to any county licensing agency that has contracted with the state for the performance of licensing duties, or to a tribal court or tribal child welfare agency of a tribe or consortium of tribes that has entered into an agreement with the state pursuant to Section 10553.1 of the Welfare and Institutions Code, information regarding a known or suspected child abuser maintained pursuant to this section and subdivision (a) of Section 11169 concerning any person who is an applicant for licensure or any adult who resides or is employed in the home of an applicant for licensure or who is an applicant for employment in a position

1 having supervisory or disciplinary power over a child or children,
2 or who will provide 24-hour care for a child or children in a
3 residential home or facility, pursuant to Section 1522.1 or 1596.877
4 of the Health and Safety Code, or Section 8714, 8802, 8912, or
5 9000 of the Family Code.

6 (5) The Department of Justice shall make available to a Court
7 Appointed Special Advocate program that is conducting a
8 background investigation of an applicant seeking employment
9 with the program or a volunteer position as a Court Appointed
10 Special Advocate, as defined in Section 101 of the Welfare and
11 Institutions Code, information contained in the index regarding
12 known or suspected child abuse by the applicant.

13 (6) For purposes of child death review, the Department of Justice
14 shall make available to the chairperson, or the chairperson's
15 designee, for each county child death review team, or the State
16 Child Death Review Council, information maintained in the Child
17 Abuse Central Index pursuant to subdivision (a) relating to the
18 death of one or more children and any prior child abuse or neglect
19 investigation reports maintained involving the same victims,
20 siblings, or suspects. Local child death review teams may share
21 any relevant information regarding case reviews involving child
22 death with other child death review teams.

23 (7) The department shall make available to investigative
24 agencies or probation officers, or court investigators acting
25 pursuant to Section 1513 of the Probate Code, responsible for
26 placing children or assessing the possible placement of children
27 pursuant to Article 6 (commencing with Section 300), Article 7
28 (commencing with Section 305), Article 10 (commencing with
29 Section 360), or Article 14 (commencing with Section 601) of
30 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
31 Code, Article 2 (commencing with Section 1510) or Article 3
32 (commencing with Section 1540) of Chapter 1 of Part 2 of Division
33 4 of the Probate Code, information regarding a known or suspected
34 child abuser contained in the index concerning any adult residing
35 in the home where the child may be placed, when this information
36 is requested for purposes of ensuring that the placement is in the
37 best interest of the child. Upon receipt of relevant information
38 concerning child abuse or neglect investigation reports contained
39 in the index from the Department of Justice pursuant to this
40 subdivision, the agency or court investigator shall notify, in writing,

1 the person listed in the Child Abuse Central Index that he or she
2 is in the index. The notification shall include the name of the
3 reporting agency and the date of the report.

4 (8) The Department of Justice shall make available to a
5 government agency conducting a background investigation
6 pursuant to Section 1031 of the Government Code of an applicant
7 seeking employment as a peace officer, as defined in Section 830,
8 information regarding a known or suspected child abuser
9 maintained pursuant to this section concerning the applicant.

10 (9) The Department of Justice shall make available to a county
11 child welfare agency or delegated county adoption agency, as
12 defined in Section 8515 of the Family Code, conducting a
13 background investigation, or a government agency conducting a
14 background investigation on behalf of one of those agencies,
15 information regarding a known or suspected child abuser
16 maintained pursuant to this section and subdivision (a) of Section
17 11169 concerning any applicant seeking employment or volunteer
18 status with the agency who, in the course of his or her employment
19 or volunteer work, will have direct contact with children who are
20 alleged to have been, are at risk of, or have suffered, abuse or
21 neglect.

22 (10) (A) Persons or agencies, as specified in subdivision (b),
23 if investigating a case of known or suspected child abuse or neglect,
24 or the State Department of Social Services or any county licensing
25 agency pursuant to paragraph (4), or a Court Appointed Special
26 Advocate program conducting a background investigation for
27 employment or volunteer candidates pursuant to paragraph (5), or
28 an investigative agency, probation officer, or court investigator
29 responsible for placing children or assessing the possible placement
30 of children pursuant to paragraph (7), or a government agency
31 conducting a background investigation of an applicant seeking
32 employment as a peace officer pursuant to paragraph (8), or a
33 county child welfare agency or delegated county adoption agency
34 conducting a background investigation of an applicant seeking
35 employment or volunteer status who, in the course of his or her
36 employment or volunteer work, will have direct contact with
37 children who are alleged to have been, are at risk of, or have
38 suffered, abuse or neglect, pursuant to paragraph (9), to whom
39 disclosure of any information maintained pursuant to subdivision
40 (a) is authorized, are responsible for obtaining the original

1 investigative report from the reporting agency, and for drawing
2 independent conclusions regarding the quality of the evidence
3 disclosed, and its sufficiency for making decisions regarding
4 investigation, prosecution, licensing, placement of a child,
5 employment or volunteer positions with a CASA program, or
6 employment as a peace officer.

7 (B) If Child Abuse Central Index information is requested by
8 an agency for the temporary placement of a child in an emergency
9 situation pursuant to Article 7 (commencing with Section 305) of
10 Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions
11 Code, the department is exempt from the requirements of Section
12 1798.18 of the Civil Code if compliance would cause a delay in
13 providing an expedited response to the agency's inquiry and if
14 further delay in placement may be detrimental to the child.

15 (11) (A) Whenever information contained in the Department
16 of Justice files is furnished as the result of an application for
17 employment or licensing or volunteer status pursuant to paragraph
18 (4), (5), (8), or (9), the Department of Justice may charge the person
19 or entity making the request a fee. The fee shall not exceed the
20 reasonable costs to the department of providing the information.
21 The only increase shall be at a rate not to exceed the legislatively
22 approved cost-of-living adjustment for the department. In no case
23 shall the fee exceed fifteen dollars (\$15).

24 (B) All moneys received by the department pursuant to this
25 section to process trustline applications for purposes of Chapter
26 3.35 (commencing with Section 1596.60) of Division 2 of the
27 Health and Safety Code shall be deposited in a special account in
28 the General Fund that is hereby established and named the
29 Department of Justice Child Abuse Fund. Moneys in the fund shall
30 be available, upon appropriation by the Legislature, for expenditure
31 by the department to offset the costs incurred to process trustline
32 automated child abuse or neglect system checks pursuant to this
33 section.

34 (C) All moneys, other than those described in subparagraph (B),
35 received by the department pursuant to this paragraph shall be
36 deposited in a special account in the General Fund which is hereby
37 created and named the Department of Justice Sexual Habitual
38 Offender Fund. The funds shall be available, upon appropriation
39 by the Legislature, for expenditure by the department to offset the
40 costs incurred pursuant to Chapter 9.5 (commencing with Section

1 13885) and Chapter 10 (commencing with Section 13890) of Title
2 6 of Part 4, and the DNA and Forensic Identification Data Base
3 and Data Bank Act of 1998 (Chapter 6 (commencing with Section
4 295) of Title 9 of Part 1), and for maintenance and improvements
5 to the statewide Sexual Habitual Offender Program and the
6 California DNA offender identification file (CAL-DNA) authorized
7 by Chapter 9.5 (commencing with Section 13885) of Title 6 of
8 Part 4 and the DNA and Forensic Identification Data Base and
9 Data Bank Act of 1998 (Chapter 6 (commencing with Section 295)
10 of Title 9 of Part 1).

11 (c) The Department of Justice shall make available to any agency
12 responsible for placing children pursuant to Article 7 (commencing
13 with Section 305) of Chapter 2 of Part 1 of Division 2 of the
14 Welfare and Institutions Code, upon request, relevant information
15 concerning child abuse or neglect reports contained in the index,
16 when making a placement with a responsible relative pursuant to
17 Sections 281.5, 305, and 361.3 of the Welfare and Institutions
18 Code. Upon receipt of relevant information concerning child abuse
19 or neglect reports contained in the index from the Department of
20 Justice pursuant to this subdivision, the agency shall also notify
21 in writing the person listed in the Child Abuse Central Index that
22 he or she is in the index. The notification shall include the location
23 of the original investigative report and the submitting agency. The
24 notification shall be submitted to the person listed at the same time
25 that all other parties are notified of the information, and no later
26 than the actual judicial proceeding that determines placement.

27 If Child Abuse Central Index information is requested by an
28 agency for the placement of a child with a responsible relative in
29 an emergency situation pursuant to Article 7 (commencing with
30 Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare
31 and Institutions Code, the department is exempt from the
32 requirements of Section 1798.18 of the Civil Code if compliance
33 would cause a delay in providing an expedited response to the
34 child protective agency's inquiry and if further delay in placement
35 may be detrimental to the child.

36 (d) The department shall make available any information
37 maintained pursuant to subdivision (a) to out-of-state law
38 enforcement agencies conducting investigations of known or
39 suspected child abuse or neglect only when an agency makes the
40 request for information in writing and on official letterhead, or as

1 designated by the department, identifying the suspected abuser or
2 victim by name and date of birth or approximate age. The request
3 shall be signed by the department supervisor of the requesting law
4 enforcement agency. The written requests shall cite the out-of-state
5 statute or interstate compact provision that requires that the
6 information contained within these reports shall be disclosed only
7 to law enforcement, prosecutorial entities, or multidisciplinary
8 investigative teams, and shall cite the safeguards in place to prevent
9 unlawful disclosure of any confidential information provided by
10 the requesting state or the applicable interstate compact provision.

11 (e) (1) The department shall make available to an out-of-state
12 agency, for purposes of approving a prospective foster or adoptive
13 parent in compliance with the Adam Walsh Child Protection and
14 Safety Act of 2006 (P.L. 109-248), information regarding a known
15 or suspected child abuser maintained pursuant to subdivision (a)
16 concerning the prospective foster or adoptive parent, and any other
17 adult living in the home of the prospective foster or adoptive parent.
18 The department shall make that information available only when
19 the out-of-state agency makes the request indicating that continual
20 compliance will be maintained with the requirement in paragraph
21 (20) of subdivision (a) of Section 671 of Title 42 of the United
22 States Code that requires the state to have in place safeguards to
23 prevent the unauthorized disclosure of information in any child
24 abuse and neglect registry maintained by the state and prevent the
25 information from being used for a purpose other than the
26 conducting of background checks in foster or adoption placement
27 cases.

28 (2) With respect to any information provided by the department
29 in response to the out-of-state agency's request, the out-of-state
30 agency is responsible for obtaining the original investigative report
31 from the reporting agency, and for drawing independent
32 conclusions regarding the quality of the evidence disclosed and
33 its sufficiency for making decisions regarding the approval of
34 prospective foster or adoptive parents.

35 (3) (A) Whenever information contained in the index is
36 furnished pursuant to this subdivision, the department shall charge
37 the out-of-state agency making the request a fee. The fee shall not
38 exceed the reasonable costs to the department of providing the
39 information. The only increase shall be at a rate not to exceed the

1 legislatively approved cost-of-living adjustment for the department.
2 In no case shall the fee exceed fifteen dollars (\$15).

3 (B) All moneys received by the department pursuant to this
4 subdivision shall be deposited in the Department of Justice Child
5 Abuse Fund, established under subparagraph (B) of paragraph (11)
6 of subdivision (b). Moneys in the fund shall be available, upon
7 appropriation by the Legislature, for expenditure by the department
8 to offset the costs incurred to process requests for information
9 pursuant to this subdivision.

10 (f) (1) Any person may determine if he or she is listed in the
11 Child Abuse Central Index by making a request in writing to the
12 Department of Justice. The request shall be notarized and include
13 the person's name, address, date of birth, and either a social
14 security number or a California identification number. Upon receipt
15 of a notarized request, the Department of Justice shall make
16 available to the requesting person information identifying the date
17 of the report and the submitting agency. The requesting person is
18 responsible for obtaining the investigative report from the
19 submitting agency pursuant to paragraph (11) of subdivision (b)
20 of Section 11167.5.

21 (2) No person or agency shall require or request another person
22 to furnish a copy of a record concerning himself or herself, or
23 notification that a record concerning himself or herself exists or
24 does not exist, pursuant to paragraph (1).

25 (g) If a person is listed in the Child Abuse Central Index only
26 as a victim of child abuse or neglect, and that person is 18 years
27 of age or older, that person may have his or her name removed
28 from the index by making a written request to the Department of
29 Justice. The request shall be notarized and include the person's
30 name, address, social security number, and date of birth.

31 SEC. 179. Section 11411 of the Penal Code is amended to read:

32 11411. (a) Any person who hangs a noose, knowing it to be
33 a symbol representing a threat to life, on the private property of
34 another, without authorization, for the purpose of terrorizing the
35 owner or occupant of that private property or in reckless disregard
36 of the risk of terrorizing the owner or occupant of that private
37 property, or who hangs a noose, knowing it to be a symbol
38 representing a threat to life, on the property of a primary school,
39 junior high school, high school, college campus, public park, or
40 place of employment, for the purpose of terrorizing any person

1 who attends or works at the school, park, or place of employment,
2 or who is otherwise associated with the school, park, or place of
3 employment, shall be punished by imprisonment in a county jail
4 not to exceed one year, or by a fine not to exceed five thousand
5 dollars (\$5,000), or by both the fine and imprisonment for the first
6 conviction or by imprisonment in a county jail not to exceed one
7 year, or by a fine not to exceed fifteen thousand dollars (\$15,000),
8 or by both the fine and imprisonment for any subsequent
9 conviction.

10 (b) Any person who places or displays a sign, mark, symbol,
11 emblem, or other physical impression, including, but not limited
12 to, a Nazi swastika, on the private property of another, without
13 authorization, for the purpose of terrorizing the owner or occupant
14 of that private property or in reckless disregard of the risk of
15 terrorizing the owner or occupant of that private property shall be
16 punished by imprisonment in a county jail not to exceed one year,
17 by a fine not to exceed five thousand dollars (\$5,000), or by both
18 the fine and imprisonment for the first conviction and by
19 imprisonment in a county jail not to exceed one year, by a fine not
20 to exceed fifteen thousand dollars (\$15,000), or by both the fine
21 and imprisonment for any subsequent conviction.

22 (c) Any person who engages in a pattern of conduct for the
23 purpose of terrorizing the owner or occupant of private property
24 or in reckless disregard of terrorizing the owner or occupant of
25 that private property, by placing or displaying a sign, mark, symbol,
26 emblem, or other physical impression, including, but not limited
27 to, a Nazi swastika, on the private property of another on two or
28 more occasions, shall be punished by imprisonment in the state
29 prison for 16 months or 2 or 3 years, by a fine not to exceed ten
30 thousand dollars (\$10,000), or by both the fine and imprisonment,
31 or by imprisonment in a county jail not to exceed one year, by a
32 fine not to exceed five thousand dollars (\$5,000), or by both the
33 fine and imprisonment. A violation of this subdivision shall not
34 constitute felonious conduct for purposes of Section 186.22.

35 (d) Any person who burns or desecrates a cross or other religious
36 symbol, knowing it to be a religious symbol, on the private property
37 of another without authorization for the purpose of terrorizing the
38 owner or occupant of that private property or in reckless disregard
39 of the risk of terrorizing the owner or occupant of that private
40 property, or who burns, desecrates, or destroys a cross or other

1 religious symbol, knowing it to be a religious symbol, on the
2 property of a primary school, junior high school, or high school
3 for the purpose of terrorizing any person who attends or works at
4 the school or who is otherwise associated with the school, shall
5 be punished by imprisonment in the state prison for 16 months or
6 2 or 3 years, by a fine of not more than ten thousand dollars
7 (\$10,000), or by both the fine and imprisonment, or by
8 imprisonment in a county jail not to exceed one year, by a fine not
9 to exceed five thousand dollars (\$5,000), or by both the fine and
10 imprisonment for the first conviction and by imprisonment in the
11 state prison for 16 months or 2 or 3 years, by a fine of not more
12 than ten thousand dollars (\$10,000), or by both the fine and
13 imprisonment, or by imprisonment in a county jail not to exceed
14 one year, by a fine not to exceed fifteen thousand dollars (\$15,000),
15 or by both the fine and imprisonment for any subsequent
16 conviction.

17 (e) As used in this section, “terrorize” means to cause a person
18 of ordinary emotions and sensibilities to fear for personal safety.

19 (f) The provisions of this section are severable. If any provision
20 of this section or its application is held invalid, that invalidity shall
21 not affect other provisions or applications that can be given effect
22 without the invalid provision or application.

23 SEC. 180. Section 13821 of the Penal Code is amended to read:

24 13821. (a) Of the amount deposited in the Local Safety and
25 Protection Account in the Transportation Tax Fund authorized by
26 Section 10752.2 of the Revenue and Taxation Code, the Controller
27 shall allocate 12.68 percent in the 2008–09 fiscal year and 11.42
28 percent in the 2009–10 fiscal year, and each fiscal year thereafter,
29 to the California Emergency Management Agency. The Controller
30 shall allocate these funds on a quarterly basis beginning April 1,
31 2009.

32 (b) These funds shall be allocated by the California Emergency
33 Management Agency according to the agency’s existing
34 programmatic guidelines and consistent with the programs
35 approved in the Budget Act of 2008 (Chapters 268 and 269 of the
36 Statutes of 2008). Of the amount allocated pursuant to subdivision
37 (a), the California Emergency Management Agency shall distribute
38 these funds according to the following percentages:

1 (1) The California Multi-Jurisdictional Methamphetamine
2 Enforcement Teams shall receive 33.95 percent in the 2008–09
3 fiscal year and each fiscal year thereafter.

4 (2) The Multi-Agency Gang Enforcement Consortium shall
5 receive 0.15 percent in the 2008–09 fiscal year, and each fiscal
6 year thereafter.

7 (3) The CALGANG program administered by the Department
8 of Justice shall receive 0.47 percent in the 2008–09 fiscal year,
9 and each fiscal year thereafter.

10 (4) The Evidentiary Medical Training Program shall receive
11 1.02 percent in the 2008–09 fiscal year and each fiscal year
12 thereafter.

13 (5) The Public Prosecutors and Public Defenders Legal Training
14 program shall receive 0.01 percent in the 2008–09 fiscal year and
15 each fiscal year thereafter.

16 (6) The Sexual Assault Felony Enforcement Teams, authorized
17 by Section 13887, shall receive 8.93 percent in the 2008–09 fiscal
18 year and each fiscal year thereafter.

19 (7) The Vertical Prosecution Block Grant Program shall receive
20 25.35 percent in the 2008–09 fiscal year and each fiscal year
21 thereafter.

22 (8) The High Technology Theft Apprehension and Prosecution
23 Program, authorized by Section 13848.2, shall receive 20.84
24 percent in the 2008–09 fiscal year, and each fiscal year thereafter.

25 (9) The Gang Violence Suppression Program, authorized by
26 Section 13826.1, shall receive 2.8 percent in the 2008–09 fiscal
27 year and each fiscal year thereafter.

28 (10) The Central Valley and Central Coast Rural Crime
29 Prevention Programs, authorized by Sections 14170 and 14180,
30 shall receive 6.49 percent in the 2008–09 fiscal year and each fiscal
31 year thereafter.

32 (c) Beginning in the 2009–10 fiscal year and each fiscal year
33 thereafter, the California Emergency Management Agency may
34 retain up to 3 percent of the funds allocated in subdivision (a) for
35 program administrative costs.

36 SEC. 181. Section 13823.16 of the Penal Code is amended to
37 read:

38 13823.16. (a) The Comprehensive Statewide Domestic
39 Violence Program established pursuant to Section 13823.15 shall
40 be collaboratively administered by the California Emergency

1 Management Agency (Cal EMA) and an advisory council. The
2 membership of the Cal EMA Domestic Violence Advisory Council
3 shall consist of experts in the provision of either direct or
4 intervention services to victims of domestic violence and their
5 children, within the scope and intention of the Comprehensive
6 Statewide Domestic Violence Assistance Program.

7 (b) The membership of the council shall consist of domestic
8 violence victims' advocates, battered women service providers, at
9 least one representative of service providers serving the lesbian,
10 gay, bisexual, and transgender community in connection with
11 domestic violence, and representatives of women's organizations,
12 law enforcement, and other groups involved with domestic
13 violence. At least one-half of the council membership shall consist
14 of domestic violence victims' advocates or battered women service
15 providers from organizations such as the California Partnership to
16 End Domestic Violence. It is the intent of the Legislature that the
17 council membership reflect the ethnic, racial, cultural, and
18 geographic diversity of the state. The council shall be composed
19 of no more than 13 voting members and 2 nonvoting ex officio
20 members who shall be appointed, as follows:

21 (1) Seven voting members shall be appointed by the Governor.

22 (2) Three voting members shall be appointed by the Speaker of
23 the Assembly.

24 (3) Three voting members shall be appointed by the Senate
25 Committee on Rules.

26 (4) Two nonvoting ex officio members shall be Members of the
27 Legislature, one appointed by the Speaker of the Assembly and
28 one appointed by the Senate Committee on Rules. Any Member
29 of the Legislature appointed to the council shall meet with the
30 council and participate in its activities to the extent that
31 participation is not incompatible with his or her position as a
32 Member of the Legislature.

33 (c) The Cal EMA shall collaborate closely with the council in
34 developing funding priorities, framing the request for proposals,
35 and soliciting proposals.

36 (d) This section shall remain in effect only until January 1, 2015,
37 and as of that date is repealed, unless a later enacted statute, that
38 is enacted before January 1, 2015, deletes or extends that date.

39 SEC. 182. Section 13848.6 of the Penal Code is amended to
40 read:

1 13848.6. (a) The High Technology Crime Advisory Committee
2 is hereby established for the purpose of formulating a
3 comprehensive written strategy for addressing high technology
4 crime throughout the state, with the exception of crimes that occur
5 on state property or are committed against state employees, and
6 to advise the California Emergency Management Agency on the
7 appropriate disbursement of funds to regional task forces.

8 (b) This strategy shall be designed to be implemented through
9 regional task forces. In formulating that strategy, the committee
10 shall identify various priorities for law enforcement attention,
11 including the following goals:

12 (1) To apprehend and prosecute criminal organizations,
13 networks, and groups of individuals engaged in the following
14 activities:

15 (A) Theft of computer components and other high technology
16 products.

17 (B) Violations of Sections 211, 350, 351a, 459, 496, 537e, 593d,
18 593e, 653h, 653s, and 653w.

19 (C) Theft of telecommunications services and other violations
20 of Sections 502.7 and 502.8.

21 (D) Counterfeiting of negotiable instruments and other valuable
22 items through the use of computer technology.

23 (E) Creation and distribution of counterfeit software and other
24 digital information, including the use of counterfeit trademarks to
25 misrepresent the origin of that software or digital information.

26 (F) Creation and distribution of pirated sound recordings or
27 audiovisual works or the failure to disclose the origin of a recording
28 or audiovisual work.

29 (2) To apprehend and prosecute individuals and groups engaged
30 in the unlawful access, destruction, or unauthorized entry into and
31 use of private, corporate, or government computers and networks,
32 including wireless and wire line communications networks and
33 law enforcement dispatch systems, and the theft, interception,
34 manipulation, destruction, and unauthorized disclosure of data
35 stored within those computers.

36 (3) To apprehend and prosecute individuals and groups engaged
37 in the theft of trade secrets.

38 (4) To investigate and prosecute high technology crime cases
39 requiring coordination and cooperation between regional task

1 forces and local, state, federal, and international law enforcement
2 agencies.

3 (c) The Secretary of California Emergency Management shall
4 appoint the following members to the committee:

5 (1) A designee of the California District Attorneys Association.

6 (2) A designee of the California State Sheriffs Association.

7 (3) A designee of the California Police Chiefs Association.

8 (4) A designee of the Attorney General.

9 (5) A designee of the Department of the California Highway
10 Patrol.

11 (6) A designee of the High Technology Crime Investigation
12 Association.

13 (7) A designee of the California Emergency Management
14 Agency.

15 (8) A designee of the American Electronic Association to
16 represent California computer system manufacturers.

17 (9) A designee of the American Electronic Association to
18 represent California computer software producers.

19 (10) A designee of CTIA - The Wireless Association.

20 (11) A representative of the California Internet industry.

21 (12) A designee of the Semiconductor Equipment and Materials
22 International.

23 (13) A designee of the California Cable & Telecommunications
24 Association.

25 (14) A designee of the Motion Picture Association of America.

26 (15) A designee of the California Communications Associations
27 (CalCom).

28 (16) A representative of the California banking industry.

29 (17) A representative of the Office of Information Security and
30 Privacy Protection.

31 (18) A representative of the Department of Finance.

32 (19) A representative of the State Chief Information Officer.

33 (20) A representative of the Recording Industry of America.

34 (21) A representative of the Consumers Union.

35 (d) The Secretary of California Emergency Management shall
36 designate the Chairperson of the High Technology Crime Advisory
37 Committee from the appointed members.

38 (e) The advisory committee shall not be required to meet more
39 than 12 times per year. The advisory committee may create
40 subcommittees of its own membership, and each subcommittee

1 shall meet as often as the subcommittee members find necessary.
2 It is the intent of the Legislature that all advisory committee
3 members shall actively participate in all advisory committee
4 deliberations required by this chapter.

5 Any member who, without advance notice to the Secretary of
6 California Emergency Management and without designating an
7 alternative representative, misses three scheduled meetings in any
8 calendar year for any reason other than severe temporary illness
9 or injury (as determined by the secretary) shall automatically be
10 removed from the advisory committee. If a member wishes to send
11 an alternative representative in his or her place, advance written
12 notification of this substitution shall be presented to the executive
13 director. This notification shall be required for each meeting the
14 appointed member elects not to attend.

15 Members of the advisory committee shall receive no
16 compensation for their services, but shall be reimbursed for travel
17 and per diem expenses incurred as a result of attending meetings
18 sponsored by the California Emergency Management Agency.

19 (f) The Secretary of California Emergency Management, in
20 consultation with the High Technology Crime Advisory
21 Committee, shall develop specific guidelines and administrative
22 procedures for the selection of projects to be funded by the High
23 Technology Theft Apprehension and Prosecution Program, which
24 guidelines shall include the following selection criteria:

25 (1) Each regional task force that seeks funds shall submit a
26 written application to the committee setting forth in detail the
27 proposed use of the funds.

28 (2) In order to qualify for the receipt of funds, each proposed
29 regional task force submitting an application shall provide written
30 evidence that the agency meets either of the following conditions:

31 (A) The regional task force devoted to the investigation and
32 prosecution of high technology related crimes is comprised of local
33 law enforcement and prosecutors, and has been in existence for at
34 least one year prior to the application date.

35 (B) At least one member of the task force has at least three years
36 of experience in investigating or prosecuting cases of suspected
37 high technology crime.

38 (3) Each regional task force shall be identified by a name that
39 is appropriate to the area that it serves. In order to qualify for funds,
40 a regional task force shall be comprised of local law enforcement

1 and prosecutors from at least two counties. At the time of funding,
2 the proposed task force shall also have at least one investigator
3 assigned to it from a state law enforcement agency. Each task force
4 shall be directed by a local steering committee composed of
5 representatives of participating agencies and members of the local
6 high technology industry.

7 (4) The California High Technology Crimes Task Force shall
8 be comprised of each regional task force developed pursuant to
9 this subdivision.

10 (5) Additional criteria that shall be considered by the advisory
11 committee in awarding grant funds shall include, but not be limited
12 to, the following:

13 (A) The number of high technology crime cases filed in the
14 prior year.

15 (B) The number of high technology crime cases investigated in
16 the prior year.

17 (C) The number of victims involved in the cases filed.

18 (D) The total aggregate monetary loss suffered by the victims,
19 including individuals, associations, institutions, or corporations,
20 as a result of the high technology crime cases filed, and those under
21 active investigation by that task force.

22 (6) Each regional task force that has been awarded funds
23 authorized under the High Technology Theft Apprehension and
24 Prosecution Program during the previous grant-funding cycle,
25 upon reapplication for funds to the committee in each successive
26 year, shall be required to submit a detailed accounting of funds
27 received and expended in the prior year in addition to any
28 information required by this section. The accounting shall include
29 all of the following information:

30 (A) The amount of funds received and expended.

31 (B) The use to which those funds were put, including payment
32 of salaries and expenses, purchase of equipment and supplies, and
33 other expenditures by type.

34 (C) The number of filed complaints, investigations, arrests, and
35 convictions that resulted from the expenditure of the funds.

36 (g) The committee shall annually review the effectiveness of
37 the California High Technology Crimes Task Force in deterring,
38 investigating, and prosecuting high technology crimes and provide
39 its findings in a report to the Legislature and the Governor. This
40 report shall be based on information provided by the regional task

1 forces in an annual report to the committee which shall detail the
2 following:

3 (1) Facts based upon, but not limited to, the following:

4 (A) The number of high technology crime cases filed in the
5 prior year.

6 (B) The number of high technology crime cases investigated in
7 the prior year.

8 (C) The number of victims involved in the cases filed.

9 (D) The number of convictions obtained in the prior year.

10 (E) The total aggregate monetary loss suffered by the victims,
11 including individuals, associations, institutions, corporations, and
12 other relevant public entities, according to the number of cases
13 filed, investigations, prosecutions, and convictions obtained.

14 (2) An accounting of funds received and expended in the prior
15 year, which shall include all of the following:

16 (A) The amount of funds received and expended.

17 (B) The uses to which those funds were put, including payment
18 of salaries and expenses, purchase of supplies, and other
19 expenditures of funds.

20 (C) Any other relevant information requested.

21 SEC. 183. Section 14029.5 of the Penal Code is amended to
22 read:

23 14029.5. (a) (1) No person or private entity shall post on the
24 Internet the home address, the telephone number, or personal
25 identifying information that discloses the location of any witness
26 or witness' family member participating in the Witness Relocation
27 and Assistance Program (WRAP) with the intent that another
28 person imminently use that information to commit a crime
29 involving violence or a threat of violence against that witness or
30 witness' family member.

31 (2) A violation of this subdivision is a misdemeanor punishable
32 by a fine of up to two thousand five hundred dollars (\$2,500), or
33 imprisonment of up to six months in a county jail, or by both that
34 fine and imprisonment.

35 (3) A violation of this subdivision that leads to the bodily injury
36 of the witness, or of any of the witness' family members who are
37 participating in the program, is a misdemeanor punishable by a
38 fine of up to five thousand dollars (\$5,000), or imprisonment of
39 up to one year in a county jail, or by both that fine and
40 imprisonment.

1 (b) Upon admission to WRAP, local or state prosecutors shall
2 give each participant a written opt-out form for submission to
3 relevant Internet search engine companies or entities. This form
4 shall notify entities of the protected person and prevent the
5 inclusion of the participant's addresses and telephone numbers in
6 public Internet search databases.

7 (c) A business, state or local agency, private entity, or person
8 that receives the opt-out form of a WRAP participant pursuant to
9 this section shall remove the participant's personal information
10 from public display on the Internet within two business days of
11 delivery of the opt-out form, and shall continue to ensure that this
12 information is not reposted on the same Internet Web site, a
13 subsidiary site, or any other Internet Web site maintained by the
14 recipient of the opt-out form. No business, state or local agency,
15 private entity, or person that has received an opt-out form from a
16 WRAP participant shall solicit, sell, or trade on the Internet the
17 home address or telephone number of that participant.

18 (d) A business, state or local agency, private entity, or person
19 that violates subdivision (c) shall be subject to a civil penalty for
20 each violation in the amount of five thousand dollars (\$5,000). An
21 action for a civil penalty under this subdivision may be brought
22 by any public prosecutor in the name of the people of the State of
23 California and the penalty imposed shall be enforceable as a civil
24 judgment.

25 (e) A witness whose home address or telephone number is made
26 public as a result of a violation of subdivision (c) may bring an
27 action seeking injunctive or declaratory relief in any court of
28 competent jurisdiction. If a jury or court finds that a violation has
29 occurred, it may grant injunctive or declaratory relief and shall
30 award the witness court costs and reasonable attorney's fees.

31 (f) Notwithstanding any other provision of law, a witness whose
32 home address or telephone number is solicited, sold, or traded in
33 violation of subdivision (c) may bring an action in any court of
34 competent jurisdiction. If a jury or court finds that a violation has
35 occurred, it shall award damages to that witness in an amount up
36 to a maximum of three times the actual damages, but in no case
37 less than four thousand dollars (\$4,000).

38 (g) Nothing in this section shall preclude prosecution under any
39 other provision of law.

1 SEC. 184. Section 10100 of the Public Contract Code is
2 amended to read:

3 10100. This chapter may be cited as the State Contract Act.

4 SEC. 185. Section 10101 of the Public Contract Code is
5 amended to read:

6 10101. (a) Contracts for the purchase of supplies or materials,
7 which are purchased pursuant to Chapter 2 (commencing with
8 Section 10290), are not subject to this chapter, even though the
9 seller is required to perform some incidental work or service in
10 connection with the delivery of the material or supplies.

11 (b) Contracts for which emergency work or remedial measures
12 are required are not subject to this chapter if the work or remedial
13 measures are necessary to immediately avert, alleviate, repair, or
14 mitigate destruction of property caused by the accidental or
15 unplanned release of toxic substances and are necessary to protect
16 the health, safety, and welfare of the general public.

17 SEC. 186. Section 10102 of the Public Contract Code is
18 amended to read:

19 10102. Improvements on the property of the state on the
20 waterfront of the City and County of San Francisco under the
21 jurisdiction of the San Francisco Port Commission are not subject
22 to this chapter.

23 SEC. 187. Section 10103 of the Public Contract Code is
24 amended to read:

25 10103. Work done directly by any public utility company
26 pursuant to order of the Public Utilities Commission or other public
27 authority is not subject to this chapter, whether or not done under
28 public supervision or paid for in whole or part out of public funds.

29 SEC. 188. Section 10103.5 of the Public Contract Code is
30 amended to read:

31 10103.5. Work performed by prisoners pursuant to an order
32 by the Secretary of the Department of Corrections and
33 Rehabilitation or by the Prison Industry Authority is not subject
34 to this chapter, provided that the total cost of a project for the
35 construction of new, previously unoccupied prison facilities or
36 additions to an existing facility shall not exceed fifty thousand
37 dollars (\$50,000) unless it is first approved by the State Public
38 Works Board.

39 SEC. 189. Section 10104 of the Public Contract Code is
40 amended to read:

1 10104. As used in this chapter, “mobilization” includes
2 preparatory work and operations, including, but not limited to,
3 those necessary for the movement of personnel, equipment,
4 supplies and incidentals to the project site, for the establishment
5 of all offices, buildings and other facilities necessary for work on
6 the project, and for all other work and operations which must be
7 performed or costs incurred prior to beginning work on the various
8 items on the project site.

9 SEC. 190. Section 10105 of the Public Contract Code is
10 amended to read:

11 10105. (a) As used in this chapter, “project” includes the
12 erection, construction, alteration, repair, or improvement of any
13 state structure, building, road, or other state improvement of any
14 kind that will exceed a total cost calculated pursuant to subdivision
15 (b).

16 (b) The total cost limit for calendar year 2010 shall be two
17 hundred fifty thousand dollars (\$250,000), and at two year intervals
18 thereafter, the total cost limit shall be adjusted upward or
19 downward by the Director of Finance to reflect the percentage
20 change in the annual California Construction Index as used by the
21 Department of General Services. The amount shall be rounded off
22 to the nearest one-thousand-dollar (\$1,000) figure.

23 SEC. 191. Section 10262.5 of the Public Contract Code is
24 amended to read:

25 10262.5. (a) Notwithstanding any other provision of law, a
26 prime contractor or subcontractor shall pay to any subcontractor,
27 not later than 10 days after receipt of each progress payment, the
28 respective amounts allowed the contractor on account of the work
29 performed by the subcontractors, to the extent of each
30 subcontractor’s interest therein. In the event that there is a good
31 faith dispute over all or any portion of the amount due on a progress
32 payment from the prime contractor or subcontractor to a
33 subcontractor, then the prime contractor or subcontractor may
34 withhold no more than 150 percent of the disputed amount.

35 Any contractor who violates this section shall pay to the
36 subcontractor a penalty of 2 percent of the amount due per month
37 for every month that payment is not made. In any action for the
38 collection of funds wrongfully withheld, the prevailing party shall
39 be entitled to his or her attorney’s fees and costs.

(b) This section shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to a contractor or a subcontractor in the event of a dispute involving late payment or nonpayment by a contractor or deficient subcontract performance or nonperformance by a subcontractor.

(c) On or before September 1 of each year, the head of each state agency shall submit to the Legislature a report on the number and dollar volume of written complaints received from subcontractors and prime contractors on contracts in excess of three hundred thousand dollars (\$300,000), relating to violations of this section.

SEC. 192. Section 10344 of the Public Contract Code is amended to read:

10344. (a) Contracts subject to the provisions of this article may be awarded under a procedure that makes use of a request for proposal. State agencies that use this procedure shall include in the request for proposal a clear, precise description of the work to be performed or services to be provided, a description of the format that proposals shall follow and the elements they shall contain, the standards the agency will use in evaluating proposals, the date on which proposals are due, and the timetable the agency will follow in reviewing and evaluating them.

State agencies that use a procedure that makes use of a request for proposal shall evaluate proposals and award contracts in accordance with the provisions of subdivision (b) or (c). No proposals shall be considered that have not been received at the place, and prior to the closing time, stated in the request for proposal.

(b) State agencies that use the evaluation and selection procedure in this subdivision shall include in the request for proposal, in addition to the information required by subdivision (a), a requirement that bidders submit their proposals with the bid price and all cost information in a separate, sealed envelope.

Proposals shall be evaluated and the contract awarded in the following manner:

(1) All proposals received shall be reviewed to determine those that meet the format requirements and the standards specified in the request for proposal.

1 (2) The sealed envelopes containing the bid price and cost
2 information for those proposals that meet the format requirements
3 and standards shall then be publicly opened and read.

4 (3) The contract shall be awarded to the lowest responsible
5 bidder meeting the standards.

6 (c) State agencies that use the evaluation and selection procedure
7 in this subdivision shall include in the request for proposal, in
8 addition to the information required by subdivision (a), a
9 description of the methods that will be used in evaluating and
10 scoring the proposals. Any evaluation and scoring method shall
11 ensure that substantial weight in relationship to all other criteria
12 utilized shall be given to the contract price proposed by the bidder.

13 Proposals shall be evaluated and the contract awarded in the
14 following manner:

15 (1) All proposals shall be reviewed to determine which meet
16 the format requirements specified in the request for proposal.

17 (2) All proposals meeting the formal requirements shall then
18 be submitted to an agency evaluation committee which shall
19 evaluate and score the proposals using the methods specified in
20 the request for proposal. All proposals and all evaluation and
21 scoring sheets shall be available for public inspection at the
22 conclusion of the committee scoring process.

23 (3) The contract shall be awarded to the bidder whose proposal
24 is given the highest score by the evaluation committee.

25 (d) Nothing in this section shall require the awarding of the
26 contract if no proposals are received containing bids offering a
27 contract price that in the opinion of the state agency is a reasonable
28 price.

29 (e) (1) In addition to the information required by subdivision
30 (a), a request for proposal for a contract that involves the furnishing
31 of equipment, materials, or supplies shall contain the following
32 statement:

33 “It is unlawful for any person engaged in business within this
34 state to sell or use any article or product as a “loss leader” as
35 defined in Section 17030 of the Business and Professions Code.”

36 (2) On and after March 31, 2010, and until December 31, 2011,
37 if a request for proposal does not contain the statement required
38 by paragraph (1), the awarding agency shall report this error to the
39 department within 30 days of the date the awarding agency
40 discovers this error.

(3) The department shall post in the State Contracting Manual instructions for including the statement required by paragraph (1) in all affected contracts.

(4) The statement required by paragraph (1) shall be deemed to be part of a request for proposal even if the statement is inadvertently omitted from the request for proposal.

SEC. 193. Section 2621.7 of the Public Resources Code is amended to read:

2621.7. This chapter, except Section 2621.9, shall not apply to any of the following:

(a) The conversion of an existing apartment complex into a condominium.

(b) Any development or structure in existence prior to May 4, 1975, except for an alteration or addition to a structure that exceeds the value limit specified in subdivision (c).

(c) An alteration or addition to any structure if the value of the alteration or addition does not exceed 50 percent of the value of the structure.

(d) (1) Any structure located within the jurisdiction of the City of Berkeley or the City of Oakland which was damaged by fire between October 20, 1991, and October 23, 1991, if granted an exemption pursuant to this subdivision.

(2) The city may apply to the State Geologist for an exemption and the State Geologist shall grant the exemption only if the structure located within the earthquake fault zone is not situated upon a trace of an active fault line, as delineated in the official earthquake fault zone map or in more recent geologic data, as determined by the State Geologist.

(3) When requesting an exemption, the city shall submit to the State Geologist all of the following information:

(A) Maps noting the parcel numbers of proposed building sites that are at least 50 feet from an identified fault and a statement that there is not any more recent information to indicate a geologic hazard.

(B) Identification of any sites that are within 50 feet of an identified fault.

(C) Proof that the property owner has been notified that the granting of an exemption is not any guarantee that a geologic hazard does not exist.

1 (4) The granting of the exemption does not relieve a seller of
2 real property or an agent for the seller of the obligation to disclose
3 to a prospective purchaser that the property is located within a
4 delineated earthquake fault zone, as required by Section 2621.9.

5 (e) (1) Alterations which include seismic retrofitting, as defined
6 in Section 8894.2 of the Government Code, to any of the following
7 buildings in existence prior to May 4, 1975:

8 (A) Unreinforced masonry buildings, as described in subdivision
9 (a) of Section 8875 of the Government Code.

10 (B) Concrete tilt-up buildings, as described in Section 8893 of
11 the Government Code.

12 (C) Reinforced concrete moment resisting frame buildings as
13 described in Applied Technology Council Report 21 (FEMA
14 Report 154).

15 (D) Any structure owned and operated by a state entity or agency
16 that is listed on the California Register of Historical Resources or
17 the National Register of Historic Places, including the California
18 Memorial Stadium. This exemption shall not apply unless the state
19 entity or agency submits a plan of proposed alterations to the State
20 Geologist. The addition of this subparagraph does not modify,
21 alter, conflict with, or supersede the intent or applicability of any
22 other provisions of this chapter.

23 (2) The exemption granted by subparagraphs (A), (B), and (C)
24 of paragraph (1) shall not apply unless a city or county acts in
25 accordance with all of the following:

26 (A) The building permit issued by the city or county for the
27 alterations authorizes no greater human occupancy load, regardless
28 of proposed use, than that authorized for the existing use permitted
29 at the time the city or county grants the exemption. This may be
30 accomplished by the city or county making a human occupancy
31 load determination that is based on, and no greater than, the
32 existing authorized use, and including that determination on the
33 building permit application as well as a statement substantially as
34 follows: "Under subparagraph (A) of paragraph (2) of subdivision
35 (e) of Section 2621.7 of the Public Resources Code, the occupancy
36 load is limited to the occupancy load for the last lawful use
37 authorized or existing prior to the issuance of this building permit,
38 as determined by the city or county."

39 (B) The city or county requires seismic retrofitting, as defined
40 in Section 8894.2 of the Government Code, which is necessary to

1 strengthen the entire structure and provide increased resistance to
2 ground shaking from earthquakes.

3 (C) Exemptions granted pursuant to paragraph (1) are reported
4 in writing to the State Geologist within 30 days of the building
5 permit issuance date.

6 (3) Any structure with human occupancy restrictions under
7 subparagraph (A) of paragraph (2) shall not be granted a new
8 building permit that allows an increase in human occupancy unless
9 a geologic report, prepared pursuant to subdivision (d) of Section
10 3603 of Title 14 of the California Code of Regulations in effect
11 on January 1, 1994, demonstrates that the structure is not on the
12 trace of an active fault, or the requirement of a geologic report has
13 been waived pursuant to Section 2623.

14 (4) A qualified historical building within an earthquake fault
15 zone that is exempt pursuant to this subdivision may be repaired
16 or seismically retrofitted using the State Historical Building Code,
17 except that, notwithstanding any provision of that building code
18 and its implementing regulations, paragraph (2) shall apply.

19 SEC. 194. Section 4590 of the Public Resources Code, as
20 amended by Section 1 of Chapter 269 of the Statutes of 2009, is
21 amended to read:

22 4590. (a) (1) A timber harvesting plan is effective for a period
23 of not more than three years, unless extended pursuant to paragraph
24 (2).

25 (2) A timber harvesting plan, on which timber operations have
26 commenced but not been completed, may be extended by
27 amendment for a one-year period in order to complete the timber
28 operations, up to a maximum of two 1-year extensions, if both of
29 the following occur:

30 (A) Good cause is shown.

31 (B) All timber operations are in conformance with the plan, this
32 chapter, and all applicable rules and regulations, upon the filing
33 of the notice of extension as required by this section.

34 (b) The extension shall apply to any area covered by the plan
35 for which a report has not been submitted under Section 4585. The
36 notice of extension shall be provided to the department not sooner
37 than 30 days, but at least 10 days, prior to the expiration date of
38 the plan. The notice shall include the circumstances that prevented
39 a timely completion of the timber operations under the plan, written
40 certification by a registered professional forester that neither of

1 the conditions in subdivision (f) have occurred, and, consistent
2 with Section 4583, an agreement to comply with this chapter and
3 the rules and regulations of the board as they exist on the date the
4 extension notice is filed.

5 (c) Stocking work may continue for more than the effective
6 period of the plan under subdivision (a), but shall be completed
7 within five years after the conclusion of other work.

8 (d) Notwithstanding subdivision (a) and the submission of a
9 completion report pursuant to Section 4585, a timber harvesting
10 plan, on which timber operations have commenced but not been
11 completed, may be reopened and extended by amendment for up
12 to a maximum of four 1-year extensions if the following conditions
13 have been met:

14 (1) The plan expired in 2008 or 2009.

15 (2) The plan complies with subparagraphs (A) and (B) of
16 paragraph (2) of subdivision (a).

17 (3) The notice of extension, pursuant to subdivision (b), includes
18 written certification by a registered professional forester that neither
19 of the conditions in subdivision (f) has occurred.

20 (e) A timber harvesting plan that is approved on or after January
21 1, 2010, to December 31, 2011, inclusive, may be extended by
22 amendment for a two-year period in order to complete the timber
23 operations, up to a maximum of two 2-year extensions, if the plan
24 complies with subparagraphs (A) and (B) of paragraph (2) of
25 subdivision (a) and the notice of extension, pursuant to subdivision
26 (b), includes written certification by a registered professional
27 forester that neither of the conditions in subdivision (f) has
28 occurred.

29 (f) The department shall not approve an extension pursuant to
30 subdivision (e) if either of the following has occurred:

31 (1) Listed species, as described in Article 1 (commencing with
32 Section 2050) of Chapter 1.5 of Division 3 of the Fish and Game
33 Code or the federal Endangered Species Act (16 U.S.C. Sec. 1531
34 et seq.), have been discovered in the logging area of the plan since
35 approval of the timber harvesting plan.

36 (2) Significant physical changes to the harvest area or adjacent
37 areas have occurred since the timber harvesting plan's cumulative
38 impacts were originally assessed.

39 (g) An extension of a timber harvesting plan on which either of
40 the conditions in subdivision (f) has occurred may be obtained

1 only pursuant to Section 1039 of Title 14 of the California Code
2 of Regulations. Notwithstanding the notice provision of subdivision
3 (b), for purposes of this subdivision the notice of extension shall
4 be provided to the department not sooner than 140 days, but at
5 least 10 days, prior to the expiration date of the plan.

6 (h) This section shall remain in effect only until January 1, 2012,
7 and as of that date is repealed, unless a later enacted statute, that
8 is enacted before January 1, 2012, deletes or extends that date.

9 SEC. 195. Section 5842 of the Public Resources Code is
10 amended to read:

11 5842. (a) The Legislature hereby adopts the American River
12 Parkway Plan so as to provide coordination with local agencies in
13 the protection and management of the diverse and valuable natural
14 land, water, native wildlife, and vegetation of the American River
15 Parkway.

16 (b) Actions of state and local agencies with regard to land use
17 decisions shall be consistent with the American River Parkway
18 Plan, subject to the following provisions:

19 (1) This chapter does not impair the authority and
20 responsibilities of state or local public agencies in maintaining and
21 operating the flood channel, levees, and pump stations, except that
22 these operations, as nearly as practicable, shall be consistent with
23 the American River Parkway Plan.

24 (2) This chapter does not affect the existing authority of the
25 City of Sacramento to conduct or settle litigation involving the
26 validity or application of the American River Parkway Plan.

27 (3) This chapter does not prohibit the reasonable expansion of
28 the water treatment facility operated by the City of Sacramento.

29 (4) This chapter does not impair the authority and
30 responsibilities of state agencies in managing the California
31 Exposition flood plain or Bushy Lake area pursuant to Chapter 9
32 (commencing with Section 5830).

33 (5) This chapter does not affect the exercise of existing water
34 rights.

35 (c) Notwithstanding subdivision (a), the Legislature finds and
36 declares that Chapter 10 of the American River Parkway Plan,
37 titled Area Plans, which consists of maps, policies, and narrative,
38 may be amended through a local amendment process. However,
39 Area Plans may be amended only to the extent that they are not
40 inconsistent with the state-adopted Area Plan policies contained

1 in Chapter 2 of the American River Parkway Plan. The Legislature
2 recognizes that amendments to Area Plans shall be carried out by
3 the Sacramento County Board of Supervisors in accordance with
4 the public hearing process described in Chapter 11 of the American
5 River Parkway Plan, titled Implementation, and recognizes the
6 roles and responsibilities of public agencies set forth in the public
7 hearing process including coordination with the city councils of
8 the Cities of Sacramento and Rancho Cordova.

9 SEC. 196. Section 25402.10 of the Public Resources Code is
10 amended to read:

11 25402.10. (a) On and after January 1, 2009, electric and gas
12 utilities shall maintain records of the energy consumption data of
13 all nonresidential buildings to which they provide service. This
14 data shall be maintained, in a format compatible for uploading to
15 the United States Environmental Protection Agency's ENERGY
16 STAR Portfolio Manager, for at least the most recent 12 months.

17 (b) On and after January 1, 2009, upon the written authorization
18 or secure electronic authorization of a nonresidential building
19 owner or operator, an electric or gas utility shall upload all of the
20 energy consumption data for the account specified for a building
21 to the United States Environmental Protection Agency's ENERGY
22 STAR Portfolio Manager in a manner that preserves the
23 confidentiality of the customer.

24 (c) In carrying out this section, an electric or gas utility may use
25 any method for providing the specified data in order to maximize
26 efficiency and minimize overall program cost, and is encouraged
27 to work with the United States Environmental Protection Agency
28 and customers in developing reasonable reporting options.

29 (d) (1) Based on a schedule developed by the commission
30 pursuant to paragraph (2), an owner or operator of a nonresidential
31 building shall disclose the United States Environmental Protection
32 Agency's ENERGY STAR Portfolio Manager benchmarking data
33 and ratings for the most recent 12-month period to a prospective
34 buyer, lessee of the entire building, or lender that would finance
35 the entire building. If the data is delivered to a prospective buyer,
36 lessee, or lender, a property owner, operator, or his or her agent is
37 not required to provide additional information, and the information
38 shall be deemed to be adequate to inform the prospective buyer,
39 lessee, or lender regarding the United States Environmental
40 Protection Agency's ENERGY STAR Portfolio Manager

1 benchmarking data and ratings for the most recent 12-month period
2 for the building that is being sold, leased, financed, or refinanced.

3 (2) The commission shall establish a schedule by which an
4 owner or operator is required to meet the requirements of this
5 subdivision.

6 (e) Notwithstanding subdivision (d), this section does not
7 increase or decrease the duties, if any, of a property owner,
8 operator, or his or her broker or agent under this chapter or alter
9 the duty of a seller, agent, or broker to disclose the existence of a
10 material fact affecting the real property.

11 SEC. 197. Section 48010 of the Public Resources Code is
12 amended to read:

13 48010. (a) (1) An operator of a landfill that is operating the
14 landfill on July 1, 2011, and that elects to participate in the State
15 Solid Waste Postclosure and Corrective Action Trust Fund pursuant
16 to this article, shall submit written notice to the board on or before
17 July 1, 2011.

18 (2) An operator of multiple landfills that elects to participate in
19 the State Solid Waste Postclosure and Corrective Action Trust
20 Fund is required to submit written notice that includes all of the
21 operator's operating landfills and all other landfills in which that
22 operator has in common ownership.

23 (3) The board shall provide to the state board the name and
24 address, and any other information necessary to administer and
25 collect the fee imposed pursuant to subdivision (b) of Section
26 48000, of every operator of a landfill electing to participate in the
27 State Solid Waste Postclosure and Corrective Action Trust Fund
28 on or before August 31, 2011.

29 (b) If an operator that is operating a landfill on July 1, 2011,
30 submits a written notification to the board that it elects to
31 participate after the trust fund fee goes into effect, the operator
32 shall pay all trust fund fees applicable from January 1, 2012, and
33 a 5-percent penalty before being allowed to participate.

34 (c) For new landfills that receive a solid waste facility permit
35 after July 1, 2011, the operator's election to participate in the State
36 Solid Waste Postclosure and Corrective Action Trust Fund shall
37 be submitted in writing to the board before the board concurs in
38 the issuance of the permit pursuant to Section 44009.

1 (d) All elections to participate made by landfill operators
2 pursuant to this section are final, binding, and irrevocable for those
3 operators and their successors and assignees.

4 SEC. 198. Section 48027 of the Public Resources Code is
5 amended to read:

6 48027. (a) (1) The Legislature hereby finds and declares that
7 effective response to cleanup at solid waste disposal and codisposal
8 sites requires that the state have sufficient funds available in the
9 trust fund created pursuant to subdivision (b).

10 (2) The Legislature further finds and declares that the
11 maintenance of the trust fund is of the utmost importance to the
12 state and that it is essential that, except as described in subdivision
13 (g), any moneys in the trust fund be used solely for the purposes
14 authorized in this article and not be used, loaned, or transferred
15 for any other purpose.

16 (b) The Solid Waste Disposal Site Cleanup Trust Fund is hereby
17 created in the State Treasury. Notwithstanding Section 13340 of
18 the Government Code, the moneys in the trust fund are hereby
19 continuously appropriated to the board for expenditure, without
20 regard to fiscal years, for the purposes of this article.

21 (c) The following moneys shall be deposited into the trust fund:

22 (1) Funds appropriated by the Legislature from the Integrated
23 Waste Management Account to the board for solid waste disposal
24 or codisposal site cleanup.

25 (2) Any interest earned on the moneys in the trust fund.

26 (3) Any cost recoveries from responsible parties for solid waste
27 disposal or codisposal site cleanup and loan repayments pursuant
28 to this article.

29 (d) If this article is repealed, the trust fund shall be dissolved
30 and all moneys in the fund shall be distributed to solid waste
31 landfill operators who have paid into the trust fund during the
32 effective life of the trust fund.

33 (e) Any trust fund distributions received by solid waste landfill
34 operators pursuant to subdivision (c) may be used for only any of
35 the following activities, as related to solid waste landfills:

36 (1) Solid waste landfill closure and postclosure maintenance
37 operations.

38 (2) Implementation of Part 258 (commencing with Section
39 258.1) of Chapter I of Title 40 of the Code of Federal Regulations.

40 (3) Corrective actions at the solid waste landfill.

1 (f) The balance in the trust fund each July 1 shall not exceed
2 thirty million dollars (\$30,000,000).

3 (g) Notwithstanding any other law, the Controller may use the
4 moneys in the Solid Waste Disposal Site Cleanup Trust Fund for
5 loans to the General Fund as provided in Sections 16310 and 16381
6 of the Government Code.

7 SEC. 199. Section 281 of the Public Utilities Code is amended
8 to read:

9 281. (a) The commission shall develop, implement, and
10 administer the California Advanced Services Fund to encourage
11 deployment of high-quality advanced communications services to
12 all Californians that will promote economic growth, job creation,
13 and the substantial social benefits of advanced information and
14 communications technologies, as provided in Decision 07-12-054.

15 (b) (1) All moneys collected by the surcharge authorized by
16 the commission pursuant to that decision, whether collected before
17 or after January 1, 2009, shall be transmitted to the commission
18 pursuant to a schedule established by the commission. The
19 commission shall transfer the moneys received to the Controller
20 for deposit in the California Advanced Services Fund.

21 (2) All interest earned on moneys in the fund shall be deposited
22 in the fund.

23 (3) The commission may not collect moneys, by imposing the
24 surcharge described in paragraph (1) for deposit in the fund, in an
25 amount that exceeds a total amount of one hundred million dollars
26 (\$100,000,000).

27 (c) (1) Any moneys appropriated from the California Advanced
28 Services Fund to the commission may only be expended for the
29 program administered by the commission pursuant to subdivision
30 (a), including the costs incurred by the commission in developing,
31 implementing, and administering the program and the fund.

32 (2) Notwithstanding any other law and for the sole purpose of
33 providing matching funds pursuant to the federal American
34 Recovery and Reinvestment Act of 2009 (P.L. 111-5), any entity
35 eligible for funding pursuant to that act shall be eligible to apply
36 to participate in the program administered by the commission
37 pursuant to subdivision (a), if that entity otherwise satisfies the
38 eligibility requirements under that program. Nothing in this section
39 shall impede the ability of an incumbent local exchange carrier,
40 as defined by subsection (h) of Section 251 of Title 47 of the

1 United States Code, that is regulated under a rate-of-return
2 regulatory structure, to recover, in rate base, California
3 infrastructure investment not provided through federal or state
4 grant funds for facilities that provide broadband service and
5 California intrastate voice service.

6 (d) The commission shall conduct both a financial audit and a
7 performance audit of the implementation and effectiveness of the
8 California Advanced Services Fund to ensure that funds have been
9 expended in accordance with the approved terms of the winning
10 bids and this section. The commission shall report its findings to
11 the Legislature by December 31, 2010. The report shall also include
12 an update to the maps in the final report of the California
13 Broadband Task Force.

14 (e) This section shall remain in effect only until January 1, 2013,
15 and as of that date is repealed, unless a later enacted statute, that
16 is enacted before January 1, 2013, deletes or extends that date.

17 SEC. 200. Section 399.20 of the Public Utilities Code is
18 amended to read:

19 399.20. (a) It is the policy of this state and the intent of the
20 Legislature to encourage electrical generation from eligible
21 renewable energy resources.

22 (b) As used in this section, “electric generation facility” means
23 an electric generation facility located within the service territory
24 of, and developed to sell electricity to, an electrical corporation
25 that meets all of the following criteria:

26 (1) Has an effective capacity of not more than three megawatts.

27 (2) Is interconnected and operates in parallel with the electrical
28 transmission and distribution grid.

29 (3) Is strategically located and interconnected to the electrical
30 transmission and distribution grid in a manner that optimizes the
31 deliverability of electricity generated at the facility to load centers.

32 (4) Is an eligible renewable energy resource.

33 (c) Every electrical corporation shall file with the commission
34 a standard tariff for electricity purchased from an electric
35 generation facility. The commission may modify or adjust the
36 requirements of this section for any electrical corporation with less
37 than 100,000 service connections, as individual circumstances
38 merit.

39 (d) (1) The tariff shall provide for payment for every
40 kilowatthour of electricity purchased from an electric generation

1 facility for a period of 10, 15, or 20 years, as authorized by the
2 commission. The payment shall be the market price determined
3 by the commission pursuant to Section 399.15 and shall include
4 all current and anticipated environmental compliance costs,
5 including, but not limited to, mitigation of emissions of greenhouse
6 gases and air pollution offsets associated with the operation of new
7 generating facilities in the local air pollution control or air quality
8 management district where the electric generation facility is
9 located.

10 (2) The commission may adjust the payment rate to reflect the
11 value of every kilowatthour of electricity generated on a
12 time-of-delivery basis.

13 (3) The commission shall ensure, with respect to rates and
14 charges, that ratepayers that do not receive service pursuant to the
15 tariff are indifferent to whether a ratepayer with an electric
16 generation facility receives service pursuant to the tariff.

17 (e) An electrical corporation shall provide expedited
18 interconnection procedures to an electric generation facility located
19 on a distribution circuit that generates electricity at a time and in
20 a manner so as to offset the peak demand on the distribution circuit,
21 if the electrical corporation determines that the electric generation
22 facility will not adversely affect the distribution grid. The
23 commission shall consider and may establish a value for an electric
24 generation facility located on a distribution circuit that generates
25 electricity at a time and in a manner so as to offset the peak demand
26 on the distribution circuit.

27 (f) An electrical corporation shall make the tariff available to
28 the owner or operator of an electric generation facility within the
29 service territory of the electrical corporation, upon request, on a
30 first-come-first-served basis, until the electrical corporation meets
31 its proportionate share of a statewide cap of 750 megawatts
32 cumulative rated generation capacity served under this section and
33 Section 387.6. The proportionate share shall be calculated based
34 on the ratio of the electrical corporation's peak demand compared
35 to the total statewide peak demand.

36 (g) The electrical corporation may make the terms of the tariff
37 available to owners and operators of an electric generation facility
38 in the form of a standard contract subject to commission approval.

39 (h) Every kilowatthour of electricity purchased from an electric
40 generation facility shall count toward meeting the electrical

1 corporation's renewables portfolio standard annual procurement
2 targets for purposes of paragraph (1) of subdivision (b) of Section
3 399.15.

4 (i) The physical generating capacity of an electric generation
5 facility shall count toward the electrical corporation's resource
6 adequacy requirement for purposes of Section 380.

7 (j) (1) The commission shall establish performance standards
8 for any electric generation facility that has a capacity greater than
9 one megawatt to ensure that those facilities are constructed,
10 operated, and maintained to generate the expected annual net
11 production of electricity and do not impact system reliability.

12 (2) The commission may reduce the three megawatt capacity
13 limitation of paragraph (1) of subdivision (b) if the commission
14 finds that a reduced capacity limitation is necessary to maintain
15 system reliability within that electrical corporation's service
16 territory.

17 (k) (1) Any owner or operator of an electric generation facility
18 that received ratepayer-funded incentives in accordance with
19 Section 379.6 of this code, or with Section 25782 of the Public
20 Resources Code, and participated in a net metering program
21 pursuant to Sections 2827, 2827.9, and 2827.10 of this code prior
22 to January 1, 2010, shall be eligible for a tariff or standard contract
23 filed by an electrical corporation pursuant to this section.

24 (2) In establishing the tariffs or standard contracts pursuant to
25 this section, the commission shall consider ratepayer-funded
26 incentive payments previously received by the generation facility
27 pursuant to Section 379.6 of this code or Section 25782 of the
28 Public Resources Code. The commission shall require
29 reimbursement of any funds received from these incentive
30 programs to an electric generation facility, in order for that facility
31 to be eligible for a tariff or standard contract filed by an electrical
32 corporation pursuant to this section, unless the commission
33 determines ratepayers have received sufficient value from the
34 incentives provided to the facility based on how long the project
35 has been in operation and the amount of renewable electricity
36 previously generated by the facility.

37 (3) A customer that receives service under a tariff or contract
38 approved by the commission pursuant to this section is not eligible
39 to participate in any net metering program.

1 (l) An owner or operator of an electric generation facility
2 electing to receive service under a tariff or contract approved by
3 the commission shall continue to receive service under the tariff
4 or contract until either of the following occurs:

5 (1) The owner or operator of an electric generation facility no
6 longer meets the eligibility requirements for receiving service
7 pursuant to the tariff or contract.

8 (2) The period of service established by the commission pursuant
9 to subdivision (d) is completed.

10 (m) Within 10 days of receipt of a request for a tariff pursuant
11 to this section from an owner or operator of an electric generation
12 facility, the electrical corporation that receives the request shall
13 post a copy of the request on its Internet Web site. The information
14 posted on the Internet Web site shall include the name of the city
15 in which the facility is located, but information that is proprietary
16 and confidential, including, but not limited to, address information
17 beyond the name of the city in which the facility is located, shall
18 be redacted.

19 (n) An electrical corporation may deny a tariff request pursuant
20 to this section if the electrical corporation makes any of the
21 following findings:

22 (1) The electric generation facility does not meet the
23 requirements of this section.

24 (2) The transmission or distribution grid that would serve as the
25 point of interconnection is inadequate.

26 (3) The electric generation facility does not meet all applicable
27 state and local laws and building standards, and utility
28 interconnection requirements.

29 (4) The aggregate of all electric generating facilities on a
30 distribution circuit would adversely impact utility operation and
31 load restoration efforts of the distribution system.

32 (o) Upon receiving a notice of denial from an electrical
33 corporation, the owner or operator of the electric generation facility
34 denied a tariff pursuant to this section shall have the right to appeal
35 that decision to the commission.

36 (p) In order to ensure the safety and reliability of electric
37 generation facilities, the owner of an electric generation facility
38 receiving a tariff pursuant to this section shall provide an inspection
39 and maintenance report to the electrical corporation at least once
40 every other year. The inspection and maintenance report shall be

1 prepared at the owner's or operator's expense by a
2 California-licensed contractor who is not the owner or operator of
3 the electric generation facility. A California-licensed electrician
4 shall perform the inspection of the electrical portion of the
5 generation facility.

6 (q) The contract between the electric generation facility
7 receiving the tariff and the electrical corporation shall contain
8 provisions that ensure that construction of the electric generating
9 facility complies with all applicable state and local laws and
10 building standards, and utility interconnection requirements.

11 (r) (1) All construction and installation of facilities of the
12 electrical corporation, including at the point of the output meter
13 or at the transmission or distribution grid, shall be performed only
14 by that electrical corporation.

15 (2) All interconnection facilities installed on the electrical
16 corporation's side of the transfer point for electricity between the
17 electrical corporation and the electrical conductors of the electric
18 generation facility shall be owned, operated, and maintained only
19 by the electrical corporation. The ownership, installation, operation,
20 reading, and testing of revenue metering equipment for electric
21 generating facilities shall only be performed by the electrical
22 corporation.

23 SEC. 201. Section 777.1 of the Public Utilities Code is
24 amended to read:

25 777.1. (a) If an electrical, gas, heat, or water corporation
26 furnishes residential service to residential occupants through a
27 master meter in a multiunit residential structure, mobilehome park,
28 or permanent residential structure in a labor camp, as defined in
29 Section 17008 of the Health and Safety Code, and the owner,
30 manager, or operator of the structure or park is listed by the
31 corporation as the customer of record, the corporation shall make
32 every good faith effort to inform the residential occupants, by
33 means of a written notice posted on the door of each residential
34 unit at least 15 days prior to termination, when the account is in
35 arrears, that service will be terminated on a date specified in the
36 notice. If it is not reasonable or practicable to post the notice on
37 the door of each residential unit, the corporation shall post two
38 copies of the notice in each accessible common area and at each
39 point of access to the structure or structures. The notice shall further
40 inform the residential occupants that they have the right to become

1 customers, to whom the service will then be billed, without being
2 required to pay any amount which may be due on the delinquent
3 account. The notice also shall specify, in plain language, what the
4 residential occupants are required to do in order to prevent the
5 termination of, or to reestablish service; the estimated monthly
6 cost of service; the title, address, and telephone number of a
7 representative of the corporation who can assist the residential
8 occupants in continuing service; and the address and telephone
9 number of a qualified legal services project, as defined in Section
10 6213 of the Business and Professions Code, which has been
11 recommended by the local county bar association. The notice shall
12 be in English and the languages listed in Section 1632 of the Civil
13 Code.

14 (b) The corporation is not required to make service available to
15 the residential occupants unless each residential occupant or a
16 representative of the residential occupants agrees to the terms and
17 conditions of service and meets the requirements of law and the
18 corporation's rules and tariffs. However, if one or more of the
19 residential occupants or the representative of the residential
20 occupants are willing and able to assume responsibility for
21 subsequent charges to the account to the satisfaction of the
22 corporation, or if there is a physical means, legally available to
23 the corporation, of selectively terminating service to those
24 residential occupants who have not met the requirements of the
25 corporation's rules and tariffs or for whom the representative of
26 the residential occupants is not responsible, the corporation shall
27 make service available to those residential occupants who have
28 met those requirements or on whose behalf those requirements
29 have been met.

30 (c) If prior service for a period of time or other demonstration
31 of credit worthiness is a condition for establishing credit with the
32 corporation, residence and proof of prompt payment of rent or
33 other credit obligation during that period of time acceptable to the
34 corporation is a satisfactory equivalent.

35 (d) Any residential occupant who becomes a customer of the
36 corporation pursuant to this section whose periodic payments, such
37 as rental payments, include charges for residential electrical, gas,
38 heat, or water service, where those charges are not separately
39 stated, may deduct from the periodic payment each payment period

1 all reasonable charges paid to the corporation for those services
2 during the preceding payment period.

3 (e) If a corporation furnishes residential service subject to
4 subdivision (a), the corporation shall not terminate that service in
5 any of the following situations:

6 (1) During the pendency of an investigation by the corporation
7 of a customer dispute or complaint.

8 (2) If the customer has been granted an extension of the period
9 for payment of a bill.

10 (3) For an indebtedness owed by the customer to any other
11 person or corporation or if the obligation represented by the
12 delinquent account or other indebtedness was incurred with a
13 person or corporation other than the electrical, gas, heat, or water
14 corporation demanding payment therefor.

15 (4) If a delinquent account relates to another property owned,
16 managed, or operated by the customer.

17 (5) If a public health or building officer certifies that termination
18 would result in a significant threat to the health or safety of the
19 residential occupants or the public.

20 (f) Notwithstanding any other provision of law, and in addition
21 to any other remedy provided by law, if the owner, manager, or
22 operator, by any act or omission, directs, permits, or fails to prevent
23 a termination of service while any residential unit receiving that
24 service is occupied, the residential occupant or the representative
25 of the residential occupants may commence an action for the
26 recovery of all of the following:

27 (1) Reasonable costs and expenses incurred by the residential
28 occupant or the representative of the residential occupants related
29 to restoration of service.

30 (2) Actual damages related to the termination of service.

31 (3) Reasonable attorney's fees of the residential occupants, the
32 representative of the residential occupants, or each of them,
33 incurred in the enforcement of this section, including, but not
34 limited to, enforcement of a lien.

35 (g) Notwithstanding any other provision of law, and in addition
36 to any other remedy provided by law, if the owner, manager, or
37 operator, by any act or omission, directs, permits, or fails to prevent
38 a termination of service while any residential unit receiving that
39 service is occupied, the corporation may commence an action for
40 the recovery of all of the following:

1 (1) Delinquent charges accruing prior to the expiration of the
2 notice prescribed by subdivision (a).

3 (2) Reasonable costs incurred by the corporation related to the
4 restoration of service.

5 (3) Reasonable attorney's fees of the corporation incurred in
6 the enforcement of this section or in the collection of delinquent
7 charges, including, but not limited to, enforcement of a lien.

8 If the court finds that the owner, manager, or operator has paid
9 the amount in arrears prior to termination, the court shall allow no
10 recovery of any charges, costs, damages, expenses, or fees under
11 this subdivision from the owner, manager, or operator.

12 An abstract of any money judgment entered pursuant to
13 subdivision (f) or (g) of this section shall be recorded pursuant to
14 Section 697.310 of the Code of Civil Procedure.

15 (h) No termination of service subject to this section may be
16 effected without compliance with this section, and any service
17 wrongfully terminated shall be restored without charge to the
18 residential occupants or customer for the restoration of the service.
19 In the event of a wrongful termination by the corporation, the
20 corporation shall, in addition, be liable to the residential occupants
21 or customer for actual damages resulting from the termination and
22 for the costs of enforcement of this section, including, but not
23 limited to, reasonable attorney's fees, if the residential occupants
24 or the representative of the residential occupants made a good faith
25 effort to have the service continued without interruption.

26 (i) The commission shall adopt rules and orders necessary to
27 implement this section and shall liberally construe this section to
28 accomplish its purpose of ensuring that service to residential
29 occupants is not terminated due to nonpayment by the customer
30 unless the corporation has made every reasonable effort to continue
31 service to the residential occupants. The rules and orders shall
32 include, but are not limited to, reasonable penalties for a violation
33 of this section, guidelines for assistance to residents in the
34 enforcement of this section, and requirements for the notice
35 prescribed by subdivision (a), including, but not limited to, clear
36 wording, large and boldface type, and comprehensive instructions
37 to ensure full notice to the resident.

38 (j) Nothing in this section broadens or restricts any authority of
39 a local agency that existed prior to January 1, 1989, to adopt an

1 ordinance protecting a residential occupant from the involuntary
2 termination of residential public utility service.

3 (k) This section preempts any statute or ordinance permitting
4 punitive damages against any owner, manager, or operator on
5 account of an involuntary termination of residential public utility
6 service or permitting the recovery of costs associated with the
7 formation, maintenance, and termination of a tenants' association.

8 (l) For purposes of this section, "representative of the residential
9 occupants" does not include a tenants' association.

10 SEC. 202. Section 851 of the Public Utilities Code is amended
11 to read:

12 851. A public utility, other than a common carrier by railroad
13 subject to Part A of the Interstate Commerce Act (49 U.S.C. Sec.
14 10101 et seq.), shall not sell, lease, assign, mortgage, or otherwise
15 dispose of, or encumber the whole or any part of its railroad, street
16 railroad, line, plant, system, or other property necessary or useful
17 in the performance of its duties to the public, or any franchise or
18 permit or any right thereunder, or by any means whatsoever,
19 directly or indirectly, merge or consolidate its railroad, street
20 railroad, line, plant, system, or other property, or franchises or
21 permits or any part thereof, with any other public utility, without
22 first having either secured an order from the commission
23 authorizing it to do so for qualified transactions valued above five
24 million dollars (\$5,000,000), or for qualified transactions valued
25 at five million dollars (\$5,000,000) or less, filed an advice letter
26 and obtained approval from the commission authorizing it to do
27 so. If the advice letter is uncontested, approval may be given by
28 the executive director or the director of the division of the
29 commission having regulatory jurisdiction over the utility. The
30 commission shall determine the types of transactions valued at
31 five million dollars (\$5,000,000) or less, that qualify for advice
32 letter handling. For a qualified transaction valued at five million
33 dollars (\$5,000,000) or less, the commission may designate a
34 procedure different than the advice letter procedure if it determines
35 that the transaction warrants a more comprehensive review. Absent
36 protest or incomplete documentation, the commission shall approve
37 or deny the advice letter within 120 days of its filing by the
38 applicant public utility. The commission shall reject any advice
39 letter that seeks to circumvent the five million dollar (\$5,000,000)
40 threshold by dividing a single asset with a value of more than five

1 million dollars (\$5,000,000), into component parts, each valued
2 at less than five million dollars (\$5,000,000). Every sale, lease,
3 assignment, mortgage, disposition, encumbrance, merger, or
4 consolidation made other than in accordance with the advice letter
5 and approval from the commission authorizing it is void. The
6 permission and approval of the commission to the exercise of a
7 franchise or permit under Article 1 (commencing with Section
8 1001) of Chapter 5, or the sale, lease, assignment, mortgage, or
9 other disposition or encumbrance of a franchise or permit under
10 this article shall not revive or validate any lapsed or invalid
11 franchise or permit, or enlarge or add to the powers or privileges
12 contained in the grant of any franchise or permit, or waive any
13 forfeiture.

14 This section does not prevent the sale, lease, encumbrance, or
15 other disposition by any public utility of property that is not
16 necessary or useful in the performance of its duties to the public,
17 and any disposition of property by a public utility shall be
18 conclusively presumed to be of property that is not useful or
19 necessary in the performance of its duties to the public, as to any
20 purchaser, lessee, or encumbrancer dealing with that property in
21 good faith for value, provided that this section does not apply to
22 the interchange of equipment in the regular course of transportation
23 between connecting common carriers.

24 SEC. 203. Section 2881 of the Public Utilities Code is amended
25 to read:

26 2881. (a) The commission shall design and implement a
27 program to provide a telecommunications device capable of serving
28 the needs of individuals who are deaf or hearing impaired, together
29 with a single party line, at no charge additional to the basic
30 exchange rate, to any subscriber who is certified as an individual
31 who is deaf or hearing impaired by a licensed physician and
32 surgeon, audiologist, or a qualified state or federal agency, as
33 determined by the commission, and to any subscriber that is an
34 organization representing individuals who are deaf or hearing
35 impaired, as determined and specified by the commission pursuant
36 to subdivision (e). A licensed hearing aid dispenser may certify
37 the need of an individual to participate in the program if that
38 individual has been previously fitted with an amplified device by
39 the dispenser and the dispenser has the individual's hearing records
40 on file prior to certification.

1 (b) The commission shall also design and implement a program
2 to provide a dual-party relay system, using third-party intervention
3 to connect individuals who are deaf or hearing impaired and offices
4 of organizations representing individuals who are deaf or hearing
5 impaired, as determined and specified by the commission pursuant
6 to subdivision (e), with persons of normal hearing by way of
7 intercommunications devices for individuals who are deaf or
8 hearing impaired and the telephone system, making available
9 reasonable access of all phases of public telephone service to
10 telephone subscribers who are deaf or hearing impaired. In order
11 to make a dual-party relay system that will meet the requirements
12 of individuals who are deaf or hearing impaired available at a
13 reasonable cost, the commission shall initiate an investigation,
14 conduct public hearings to determine the most cost-effective
15 method of providing dual-party relay service to the deaf or hearing
16 impaired when using a telecommunications device, and solicit the
17 advice, counsel, and physical assistance of statewide nonprofit
18 consumer organizations of the deaf, during the development and
19 implementation of the system. The commission shall phase in this
20 program, on a geographical basis, over a three-year period ending
21 on January 1, 1987. The commission shall apply for certification
22 of this program under rules adopted by the Federal
23 Communications Commission pursuant to Section 401 of the
24 federal Americans with Disabilities Act of 1990 (P.L. 101-336).

25 (c) The commission shall also design and implement a program
26 whereby specialized or supplemental telephone communications
27 equipment may be provided to subscribers who are certified to be
28 disabled at no charge additional to the basic exchange rate. The
29 certification, including a statement of visual or medical need for
30 specialized telecommunications equipment, shall be provided by
31 a licensed optometrist or physician and surgeon, acting within the
32 scope of practice of his or her license, or by a qualified state or
33 federal agency as determined by the commission. The commission
34 shall, in this connection, study the feasibility of, and implement,
35 if determined to be feasible, personal income criteria, in addition
36 to the certification of disability, for determining a subscriber's
37 eligibility under this subdivision.

38 (d) The commission shall establish a rate recovery mechanism
39 through a surcharge not to exceed one-half of 1 percent uniformly
40 applied to a subscriber's intrastate telephone service, other than

1 one-way radio paging service and universal telephone service,
2 both within a service area and between service areas, to allow
3 providers of the equipment and service specified in subdivisions
4 (a), (b), and (c) to recover costs as they are incurred under this
5 section. The surcharge shall be in effect until January 1, 2014. The
6 commission shall require that the programs implemented under
7 this section be identified on subscribers' bills and shall establish
8 a fund and require separate accounting for each of the programs
9 implemented under this section.

10 (e) The commission shall determine and specify those statewide
11 organizations representing the deaf or hearing impaired that shall
12 receive a telecommunications device pursuant to subdivision (a)
13 or a dual-party relay system pursuant to subdivision (b), or both,
14 and in which offices the equipment shall be installed in the case
15 of an organization having more than one office.

16 (f) The commission may direct any telephone corporation subject
17 to its jurisdiction to comply with its determinations and
18 specifications pursuant to this section.

19 (g) The commission shall annually review the surcharge level
20 and the balances in the funds established pursuant to subdivision
21 (d). Until January 1, 2014, the commission shall be authorized to
22 make, within the limits set by subdivision (d), any necessary
23 adjustments to the surcharge to ensure that the programs supported
24 thereby are adequately funded and that the fund balances are not
25 excessive. A fund balance which is projected to exceed six months'
26 worth of projected expenses at the end of the fiscal year is
27 excessive.

28 (h) The commission shall prepare and submit to the Legislature,
29 on or before December 31 of each year, a report on the fiscal status
30 of the programs established and funded pursuant to this section
31 and Sections 2881.1 and 2881.2. The report shall include a
32 statement of the surcharge level established pursuant to subdivision
33 (d) and revenues produced by the surcharge, an accounting of
34 program expenses, and an evaluation of options for controlling
35 those expenses and increasing program efficiency, including, but
36 not limited to, all of the following proposals:

37 (1) The establishment of a means test for persons to qualify for
38 program equipment or free or reduced charges for the use of
39 telecommunications services.

1 (2) If and to the extent not prohibited under Section 401 of the
2 federal Americans with Disabilities Act of 1990 (P.L. 101-336),
3 the imposition of limits or other restrictions on maximum usage
4 levels for the relay service, which shall include the development
5 of a program to provide basic communications requirements to all
6 relay users at discounted rates, including discounted toll-call rates,
7 and, for usage in excess of those basic requirements, at rates which
8 recover the full costs of service.

9 (3) More efficient means for obtaining and distributing
10 equipment to qualified subscribers.

11 (4) The establishment of quality standards for increasing the
12 efficiency of the relay system.

13 (i) In order to continue to meet the access needs of individuals
14 with functional limitations of hearing, vision, movement,
15 manipulation, speech, and interpretation of information, the
16 commission shall perform ongoing assessment of, and if
17 appropriate, expand the scope of the program to allow for
18 additional access capability consistent with evolving
19 telecommunications technology.

20 (j) The commission shall structure the programs required by
21 this section so that any charge imposed to promote the goals of
22 universal service reasonably equals the value of the benefits of
23 universal service to contributing entities and their subscribers.

24 SEC. 204. Section 5411 of the Public Utilities Code is amended
25 to read:

26 5411. Every charter-party carrier of passengers and every
27 officer, director, agent, or employee of any charter-party carrier
28 of passengers who violates or who fails to comply with, or who
29 procures, aids, or abets any violation by any charter-party carrier
30 of passengers of any provision of this chapter, or who fails to obey,
31 observe, or comply with any order, decision, rule, regulation,
32 direction, demand, or requirement of the commission, or of any
33 operating permit or certificate issued to any charter-party carrier
34 of passengers, or who procures, aids, or abets any charter-party
35 carrier of passengers in its failure to obey, observe, or comply with
36 any such order, decision, rule, regulation, direction, demand,
37 requirement, or operating permit or certificate, is guilty of a
38 misdemeanor and is punishable by a fine of not less than one
39 thousand dollars (\$1,000) and not more than five thousand dollars

1 (\$5,000) or by imprisonment in a county jail for not more than
2 three months, or by both that fine and imprisonment.

3 SEC. 205. Section 10009.1 of the Public Utilities Code is
4 amended to read:

5 10009.1. (a) If a public utility furnishes light, heat, water, or
6 power to residential occupants through a master meter in a
7 multiunit residential structure, mobilehome park, or permanent
8 residential structures in a labor camp, as defined in Section 17008
9 of the Health and Safety Code, and the owner, manager, or operator
10 of the structure or park is listed by the public utility as the customer
11 of record, the public utility shall make every good faith effort to
12 inform the residential occupants, by means of a written notice
13 posted on the door of each residential unit at least 15 days prior
14 to termination, when the account is in arrears, that service will be
15 terminated on a date specified in the notice. If it is not reasonable
16 or practicable to post the notice on the door of each residential
17 unit, the public utility shall post two copies of the notice in each
18 accessible common area and at each point of access to the structure
19 or structures. The notice shall further inform the residential
20 occupants that they have the right to become utility customers, to
21 whom the service will then be billed, without being required to
22 pay the amount due on the delinquent account. The notice also
23 shall specify, in plain language, what the residential occupants are
24 required to do in order to prevent the termination of, or to
25 reestablish service; the estimated monthly cost of service; the title,
26 address, and telephone number of a representative of the public
27 utility who can assist the residential occupants in continuing
28 service; and the address and telephone number of a qualified legal
29 services project, as defined in Section 6213 of the Business and
30 Professions Code, which has been recommended by the local
31 county bar association. The notice shall be in English and the
32 languages listed in Section 1632 of the Civil Code.

33 (b) The public utility is not required to make service available
34 to the residential occupants unless each residential occupant or a
35 representative of the residential occupants agrees to the terms and
36 conditions of service, and meets the requirements of law and the
37 public utility's rules. However, if one or more of the residential
38 occupants or the representative of the residential occupants are
39 willing and able to assume responsibility for subsequent charges
40 to the account to the satisfaction of the public utility, or if there is

1 a physical means, legally available to the public utility, of
2 selectively terminating service to those residential occupants who
3 have not met the requirements of the public utility's rules or for
4 whom the representative of the residential occupants is not
5 responsible, the public utility shall make service available to the
6 residential occupants who have met those requirements or on whose
7 behalf those requirements have been met.

8 (c) If prior service for a period of time or other demonstration
9 of credit worthiness is a condition for establishing credit with the
10 public utility, residence and proof of prompt payment of rent or
11 other credit obligation during that period of time acceptable to the
12 public utility is a satisfactory equivalent.

13 (d) Any residential occupant who becomes a customer of the
14 public utility pursuant to this section whose periodic payments,
15 such as rental payments, include charges for residential light, heat,
16 water, or power, where these charges are not separately stated,
17 may deduct from the periodic payment each payment period all
18 reasonable charges paid to the public utility for those services
19 during the preceding payment period.

20 (e) If a public utility furnishes residential service subject to
21 subdivision (a), the public utility may not terminate that service
22 in any of the following situations:

23 (1) During the pendency of an investigation by the public utility
24 of a customer dispute or complaint.

25 (2) If the customer has been granted an extension of the period
26 for payment of a bill.

27 (3) For an indebtedness owed by the customer to any other
28 public agency or when the obligation represented by the delinquent
29 account or other indebtedness was incurred with any public agency
30 other than the public utility.

31 (4) If a delinquent account relates to another property owned,
32 managed, or operated by the customer.

33 (5) If a public health or building officer certifies that termination
34 would result in a significant threat to the health or safety of the
35 residential occupants or the public.

36 (f) Notwithstanding any other provision of law, and in addition
37 to any other remedy provided by law, if the owner, manager, or
38 operator, by any act or omission, directs, permits, or fails to prevent
39 a termination of service while any residential unit is occupied, the
40 residential occupant or the representative of the residential

1 occupants may commence an action for the recovery of all of the
2 following:

3 (1) Reasonable costs and expenses incurred by the residential
4 occupant or the representative of the residential occupants related
5 to restoration of service.

6 (2) Actual damages related to the termination of service.

7 (3) Reasonable attorney's fees of the residential occupants, the
8 representative of the residential occupants, or each of them,
9 incurred in the enforcement of this section, including, but not
10 limited to, enforcement of a lien.

11 (g) Notwithstanding any other provision of law, and in addition
12 to any other remedy provided by law, if the owner, manager, or
13 operator, by any act or omission, directs, permits, or fails to prevent
14 a termination of service while any residential unit receiving that
15 service is occupied, the corporation may commence an action for
16 the recovery of all of the following:

17 (1) Delinquent charges accruing prior to the expiration of the
18 notice prescribed by subdivision (a).

19 (2) Reasonable costs incurred by the corporation related to the
20 restoration of service.

21 (3) Reasonable attorney's fees of the corporation incurred in
22 the enforcement of this section or in the collection of delinquent
23 charges, including, but not limited to, enforcement of a lien.

24 If the court finds that the owner, manager, or operator has paid
25 the amount in arrears prior to termination, the court shall allow no
26 recovery of any charges, costs, damages, expenses, or fees under
27 this subdivision from the owner, manager, or operator.

28 An abstract of any money judgment entered pursuant to
29 subdivision (f) or (g) of this section shall be recorded pursuant to
30 Section 697.310 of the Code of Civil Procedure.

31 (h) No termination of service subject to this section may be
32 effected without compliance with this section, and any service
33 wrongfully terminated shall be restored without charge to the
34 residential occupants or customer for the restoration of the service.
35 In the event of a wrongful termination by the public utility, the
36 public utility shall, in addition, be liable to the residential occupants
37 or customer for actual damages resulting from the termination and
38 for the costs of enforcement of this section, including, but not
39 limited to, reasonable attorney's fees, if the residential occupants

1 or the representative of the residential occupants make a good faith
2 effort to have the service continued without interruption.

3 (i) The public utility shall adopt rules and regulations necessary
4 to implement this section and shall liberally construe this section
5 to accomplish its purpose of ensuring that service to residential
6 occupants is not terminated due to nonpayment by the customer
7 unless the public utility has made every reasonable effort to
8 continue service to the residential occupants. The rules and
9 regulations shall include, but are not limited to, guidelines for
10 assistance to actual users in the enforcement of this section and
11 requirements for the notice prescribed by subdivision (a), including,
12 but not limited to, clear wording, large and boldface type, and
13 comprehensive instructions to ensure full notice to the actual user.

14 (j) Nothing in this section broadens or restricts any authority of
15 a local agency that existed prior to January 1, 1989, to adopt an
16 ordinance protecting a residential occupant from the involuntary
17 termination of residential public utility service.

18 (k) This section preempts any statute or ordinance permitting
19 punitive damages against any owner, manager, or operator on
20 account of an involuntary termination of residential public utility
21 service or permitting the recovery of costs associated with the
22 formation, maintenance, and termination of a tenants' association.

23 (l) For purposes of this section, "representative of the residential
24 occupants" does not include a tenants' association.

25 SEC. 206. Section 99233.2 of the Public Utilities Code, as
26 added by Section 2 of Chapter 530 of the Statutes of 2009, is
27 amended to read:

28 99233.2. (a) Except as provided in subdivisions (b) and (c),
29 there shall be allocated to the transportation planning agency, if it
30 is statutorily created, such sums as it may approve, up to 3 percent
31 of annual revenues, for the conduct of the transportation planning
32 and programming process, unless a greater amount is approved by
33 the director.

34 (b) (1) In those areas that have a county transportation
35 commission created pursuant to Section 130050, up to 1 percent
36 of annual revenues shall be allocated to the commission in Los
37 Angeles County, and up to 3 percent of the annual revenues shall
38 be allocated to the commissions in Orange, Riverside, and San
39 Bernardino Counties for the transportation planning and
40 programming process. Of the funds allocated to the commission

1 in Riverside County, one-half shall be allocated for planning studies
2 within the Western Riverside County and the Coachella Valley
3 areas, as determined by the commission.

4 (2) In the area of the multicounty designated transportation
5 planning agency, as defined in Section 130004, up to three-fourths
6 of 1 percent of annual revenues shall be allocated by the appropriate
7 entities, proportionately, on or before each July 1, to the
8 multicounty designated transportation planning agency for the
9 transportation planning and programming process. No operator
10 shall grant any funds it receives under this chapter to the designated
11 multicounty transportation planning agency for purposes of the
12 agency carrying out its responsibilities under Division 12
13 (commencing with Section 130000).

14 (c) In Ventura County, up to 2 percent of the annual revenues
15 shall be allocated to the Ventura County Transportation
16 Commission for the transportation planning and programming
17 process.

18 (d) This section shall become operative on July 1, 2011.

19 SEC. 207. Section 99312 of the Public Utilities Code is
20 amended to read:

21 99312. Except as provided in Sections 99311 and 99311.5, the
22 funds in the account shall be made available for the following
23 purposes:

24 (a) Fifty percent for purposes of Section 99315.

25 (b) To the Controller, 25 percent for allocation to transportation
26 planning agencies, county transportation commissions, and the
27 San Diego Metropolitan Transit Development Board pursuant to
28 Section 99314.

29 (c) To the Controller, 25 percent for allocation to transportation
30 agencies, county transportation commissions, and the San Diego
31 Metropolitan Transit Development Board for purposes of Section
32 99313.

33 (d) For the 2007–08 fiscal year, notwithstanding any other
34 provision of this section, or any other provision of law, the
35 allocations made pursuant to this section shall be adjusted as
36 follows:

37 (1) From the funds transferred to the account pursuant to
38 paragraph (1) of subdivision (a) of Section 7102 of the Revenue
39 and Taxation Code, fifty million dollars (\$50,000,000) is hereby
40 appropriated to the Controller and shall be allocated pursuant to

1 subdivision (b); fifty million dollars (\$50,000,000) is hereby
2 appropriated to the Controller and shall be allocated pursuant to
3 subdivision (c); and the remainder of revenue shall remain in the
4 Public Transportation Account to fund other state public
5 transportation priorities. The Controller shall make these allocations
6 in four equal quarterly amounts of twelve million five hundred
7 thousand dollars (\$12,500,000), as achievable by the receipt of the
8 specified revenue.

9 (2) The amount appropriated in Item 2640-101-0046 of Section
10 2.00 of the Budget Act of 2006 (Chapters 47 and 48 of the Statutes
11 of 2006) for state transit assistance pursuant to subdivisions (b)
12 and (c) was greater than the amount of revenues received to support
13 state transit assistance pursuant to Section 7102 of the Revenue
14 and Taxation Code. Therefore, notwithstanding any other provision
15 of law, the amount that would have otherwise been available for
16 appropriation to state transit assistance in the 2007–08 fiscal year
17 pursuant to paragraphs (2) and (3) of subdivision (a) of Section
18 7102 of the Revenue and Taxation Code, shall be reduced by the
19 excess amount that was appropriated to state transit assistance in
20 the Budget Act of 2006, and that excess amount, as determined
21 by the Department of Finance, shall instead remain in the Public
22 Transportation Account to fund other state public transportation
23 priorities. The funding for state transit assistance as described in
24 this paragraph is hereby appropriated to the Controller for
25 allocation. The Controller shall attempt to spread this adjustment
26 equally over four quarterly payments, as achievable by revenue
27 estimates.

28 (e) For the 2008–09 fiscal year and thereafter, notwithstanding
29 any other provision of this section or any other provision of law,
30 and except as provided in subdivision (f), the funds transferred to
31 the account pursuant to paragraph (1) of subdivision (a) of Section
32 7102 of the Revenue and Taxation Code shall be made available
33 for the following purposes:

34 (1) For purposes of Section 99315, 33.34 percent, subject to
35 appropriation by the Legislature.

36 (2) To the Controller, 33.33 percent for allocation to
37 transportation planning agencies, county transportation
38 commissions, and the San Diego Metropolitan Transit Development
39 Board pursuant to Section 99314. These funds are hereby
40 continuously appropriated for purposes of this paragraph.

(3) To the Controller, 33.33 percent for the allocation to transportation agencies, county transportation commissions, and the San Diego Metropolitan Transit Development Board for purposes of Section 99313. These funds are hereby continuously appropriated for purposes of this paragraph.

(f) For the 2009–10 to 2012–13 fiscal years, inclusive, notwithstanding any other provision of this section or any other provision of law, the funds in the account subject to this section shall be made available only for purposes of Section 99315, subject to appropriation by the Legislature.

SEC. 208. Section 185036 of the Public Utilities Code is amended to read:

185036. Upon approval by the Legislature, by the enactment of a statute, or approval by the voters of a financial plan providing the necessary funding for the construction of a high-speed network, the authority may do any of the following:

(a) Enter into contracts with private or public entities for the design, construction, and operation of high-speed trains. The contracts may be separated into individual tasks or segments or may include all tasks and segments, including a design-build or design-build-operate contract.

(b) Acquire rights-of-way through purchase or eminent domain.

(c) Issue debt, secured by pledges of state funds, federal grants, or project revenues. The pledge of state funds shall be limited to those funds expressly authorized by statute or voter-approved initiatives.

(d) Enter into cooperative or joint development agreements with local governments or private entities.

(e) Set fares and schedules.

(f) Relocate highways and utilities.

SEC. 209. Section 69 of the Revenue and Taxation Code is amended to read:

69. (a) Notwithstanding any other law, pursuant to Section 2 of Article XIII A of the California Constitution, the base year value of property that is substantially damaged or destroyed by a disaster, as declared by the Governor, may be transferred to comparable property within the same county that is acquired or newly constructed within five years after the disaster, or five years in the case of the Northridge earthquake, as a replacement for the substantially damaged or destroyed property. At the time the base

1 year value of the substantially damaged or destroyed property is
2 transferred to the replacement property, the substantially damaged
3 or destroyed property shall be reassessed at its full cash value;
4 however, the substantially damaged or destroyed property shall
5 retain its base year value notwithstanding the transfer authorized
6 by this section. If the owner or owners of substantially damaged
7 or destroyed property receive property tax relief under this section,
8 that property shall not be eligible for property tax relief under
9 subdivision (c) of Section 70 in the event of its reconstruction.

10 (b) The replacement base year value of the replacement property
11 acquired shall be determined in accordance with this section.

12 The assessor shall use the following procedure in determining
13 the appropriate replacement base year value of comparable
14 replacement property:

15 (1) If the full cash value of the comparable replacement property
16 does not exceed 120 percent of the full cash value of the property
17 substantially damaged or destroyed, then the adjusted base year
18 value of the property substantially damaged or destroyed shall be
19 transferred to the comparable replacement property as its
20 replacement base year value.

21 (2) If the full cash value of the replacement property exceeds
22 120 percent of the full cash value of the property substantially
23 damaged or destroyed, then the amount of the full cash value over
24 120 percent of the full cash value of the property substantially
25 damaged or destroyed shall be added to the adjusted base year
26 value of the property substantially damaged or destroyed. The sum
27 of these amounts shall become the replacement property's
28 replacement base year value.

29 (3) If the full cash value of the comparable replacement property
30 is less than the adjusted base year value of the property
31 substantially damaged or destroyed, then that lower value shall
32 become the replacement property's base year value.

33 (4) The full cash value of the property substantially damaged
34 or destroyed shall be the amount of its full cash value immediately
35 prior to its substantial damage or destruction, as determined by
36 the county assessor of the county in which the property is located.

37 (c) For purposes of this section:

38 (1) Property is substantially damaged or destroyed if the land
39 or the improvements sustain physical damage amounting to more
40 than 50 percent of its full cash value immediately prior to the

1 disaster. Damage includes a diminution in the value of property
2 as a result of restricted access to the property where the restricted
3 access was caused by the disaster and is permanent in nature.

4 (2) Replacement property is comparable to the property
5 substantially damaged or destroyed if it is similar in size, utility,
6 and function to the property that it replaces.

7 (A) Property is similar in function if the replacement property
8 is subject to similar governmental restrictions, such as zoning.

9 (B) Both the size and utility of property are interrelated and
10 associated with value. Property is similar in size and utility only
11 to the extent that the replacement property is, or is intended to be,
12 used in the same manner as the property substantially damaged or
13 destroyed and its full cash value does not exceed 120 percent of
14 the full cash value of the property substantially damaged or
15 destroyed.

16 (i) A replacement property or any portion thereof used or
17 intended to be used for a purpose substantially different than the
18 use made of the property substantially damaged or destroyed shall
19 to the extent of the dissimilar use be considered not similar in
20 utility.

21 (ii) A replacement property or portion thereof that satisfies the
22 use requirement but has a full cash value that exceeds 120 percent
23 of the full cash value of the property substantially damaged or
24 destroyed shall be considered, to the extent of the excess, not
25 similar in utility and size.

26 (C) To the extent that replacement property, or any portion
27 thereof, is not similar in function, size, and utility, the property,
28 or portion thereof, shall be considered to have undergone a change
29 in ownership when the replacement property is acquired or newly
30 constructed.

31 (3) “Disaster” means a major misfortune or calamity in an area
32 subsequently proclaimed by the Governor to be in a state of disaster
33 as a result of the misfortune or calamity.

34 (d) (1) This section applies to any comparable replacement
35 property acquired or newly constructed on or after July 1, 1985.

36 (2) The amendments made by Chapter 1053 of the Statutes of
37 1993 apply to any comparable replacement property that is acquired
38 or newly constructed as a replacement for property substantially
39 damaged or destroyed by a disaster occurring on or after October

1 20, 1991, and to the determination of base year values for the
2 1991–92 fiscal year and fiscal years thereafter.

3 (3) The amendments made by Chapter 317 of the Statutes of
4 2006 apply to any comparable replacement property that is acquired
5 or newly constructed as a replacement for property substantially
6 damaged or destroyed by a disaster occurring on or after July 1,
7 2003, and to the determination of base year values for the 2003–04
8 fiscal year and fiscal years thereafter.

9 (e) Only the owner or owners of the property substantially
10 damaged or destroyed, whether one or more individuals,
11 partnerships, corporations, other legal entities, or a combination
12 thereof, shall receive property tax relief under this section. Relief
13 under this section shall be granted to an owner or owners of
14 substantially damaged or destroyed property obtaining title to
15 replacement property. The acquisition of an ownership interest in
16 a legal entity that, directly or indirectly, owns real property is not
17 an acquisition of comparable property.

18 SEC. 210. Section 69.3 of the Revenue and Taxation Code is
19 amended to read:

20 69.3. (a) (1) Notwithstanding any other law, pursuant to the
21 authority of paragraph (3) of subdivision (e) of Section 2 of Article
22 XIII A of the California Constitution, a county board of supervisors,
23 after consultation with affected local agencies located within the
24 boundaries of the county, may adopt an ordinance that authorizes
25 the transfer, subject to the conditions and limitations of this section,
26 of the base year value of real property that is located within another
27 county in this state and has been substantially damaged or
28 destroyed by a disaster to comparable replacement property,
29 including land, of equal or lesser value that is located within the
30 adopting county and has been acquired or newly constructed as a
31 replacement for the damaged or destroyed property within three
32 years after the damage or destruction of the original property.

33 (2) The base year value of the original property shall be the base
34 year value of the original property as determined in accordance
35 with Section 110.1, with the inflation factor adjustments permitted
36 by subdivision (f) of Section 110.1, determined as of the date
37 immediately prior to the date that the original property was
38 substantially damaged or destroyed. The base year value of the
39 original property shall also include any inflation factor adjustments
40 permitted by subdivision (f) of Section 110.1 for the period

1 subsequent to the date of the substantial damage to, or destruction
2 of, the original property and up to the date the replacement property
3 is acquired or newly constructed, regardless of whether the claimant
4 continued to own the original property during this entire period.
5 The base year or years used to compute the base year value of the
6 original property shall be deemed to be the base year or years of
7 any property to which that base year value is transferred pursuant
8 to this section.

9 (b) For purposes of this section:

10 (1) “Affected local agency” means any city, special district,
11 school district, or community college district that receives an
12 annual allocation of ad valorem property tax revenues.

13 (2) “Claimant” means an owner or owners of real property
14 claiming the property tax relief provided by this section.

15 (3) “Comparable replacement property” means a replacement
16 property that has a full cash value of equal or lesser value as
17 defined in paragraph (6).

18 (4) “Consultation” means a noticed hearing that is conducted
19 by a county board of supervisors concerning the adoption of an
20 ordinance described in subdivision (a) and with respect to which
21 all affected local agencies within the boundaries of the county are
22 provided with reasonable notice of the time and the place of the
23 hearing and a reasonable opportunity to appear and participate.

24 (5) “Disaster” means a major misfortune or calamity in an area
25 subsequently proclaimed by the Governor to be in a state of disaster
26 as a result of the misfortune or calamity.

27 (6) “Equal or lesser value” means that the amount of the full
28 cash value of the replacement property does not exceed one of the
29 following:

30 (A) One hundred five percent of the amount of the full cash
31 value of the original property if the replacement property is
32 purchased or newly constructed within the first year following the
33 date of the damage or destruction of the original property.

34 (B) One hundred ten percent of the amount of the full cash value
35 of the original property if the replacement property is purchased
36 or newly constructed within the second year following the date of
37 the damage or destruction of the original property.

38 (C) One hundred fifteen percent of the amount of the full cash
39 value of the original property if the replacement property is

1 purchased or newly constructed within the third year following
2 the date of the damage or destruction of the original property.

3 For purposes of this paragraph, if the replacement property is,
4 in part, purchased and, in part, newly constructed, the date the
5 “replacement property is purchased or newly constructed” is the
6 date of the purchase or the date of completion of new construction,
7 whichever is later.

8 (7) “Full cash value of the original property” means its full cash
9 value, as determined in accordance with Section 110, immediately
10 prior to its substantial damage or destruction, as determined by
11 the county assessor of the county in which the property is located.

12 (8) “Full cash value of the replacement property” means its full
13 cash value, as determined in accordance with Section 110.1 as of
14 the date upon which it was purchased or new construction was
15 completed, that is applicable on and after that date.

16 (9) “Original property” means a building, structure, or other
17 shelter constituting a place of abode, whether real property or
18 personal property, that is owned and occupied by a claimant as his
19 or her principal place of residence, and any land owned by the
20 claimant on which the building, structure, or other shelter is
21 situated, that has been substantially damaged or destroyed by a
22 disaster. For purposes of this paragraph, land constituting a part
23 of original property includes only that area of reasonable size that
24 is used as a site for a residence, and “land owned by the claimant”
25 includes land for which the claimant either holds a leasehold
26 interest described in subdivision (c) of Section 61 or a land
27 purchase contract. For purposes of this paragraph, each unit of a
28 multiunit dwelling shall be considered a separate original property.

29 (10) “Owner or owners” means an individual or individuals,
30 but does not include any firm, partnership, association, corporation,
31 company, or other legal entity or organization of any kind.

32 (11) “Replacement property” means a building, structure, or
33 other shelter constituting a place of abode, whether real property
34 or personal property, that is owned and occupied by a claimant as
35 his or her principal place of residence, and any land owned by the
36 claimant on which the building, structure, or other shelter is
37 situated. For purposes of this paragraph, land constituting a part
38 of the replacement property includes only that area of reasonable
39 size that is used as the site for a residence, and “land owned by
40 the claimant” includes land for which the claimant either holds a

1 leasehold interest described in subdivision (c) of Section 61 or a
2 land purchase contract. For purposes of this paragraph, each unit
3 of a multiunit dwelling shall be considered a separate replacement
4 property. "Replacement property" does not include any property,
5 including land or improvements, if the claimant owned any portion
6 of that property prior to the date of the disaster that damaged or
7 destroyed the original property.

8 (12) "Substantially damaged or destroyed" means property
9 where either the land or the improvements sustain physical damage
10 amounting to more than 50 percent of its full cash value
11 immediately prior to the disaster. Damage includes a diminution
12 in the value of property as a result of restricted access to the
13 property where the restricted access was caused by the disaster
14 and is permanent in nature.

15 (c) At the time the base year value of the substantially damaged
16 or destroyed property is transferred to the replacement property
17 pursuant to an ordinance adopted under this section, the
18 substantially damaged or destroyed property shall be reassessed
19 at its full cash value. However, the substantially damaged or
20 destroyed property shall retain its base year value notwithstanding
21 that transfer. If the owner or owners of substantially damaged or
22 destroyed property receive property tax relief under this section,
23 that property shall not be eligible for property tax relief under
24 subdivision (c) of Section 70 in the event of its reconstruction.

25 (d) Only the owner or owners of the property that has been
26 substantially damaged or destroyed may receive property tax relief
27 under an ordinance adopted pursuant to this section. Relief under
28 an ordinance adopted pursuant to this section shall be granted to
29 an owner or owners of a substantially damaged or destroyed
30 property obtaining comparable replacement property. The
31 acquisition of an ownership interest in a legal entity that, directly
32 or indirectly, owns real property is not an acquisition of comparable
33 replacement property for purposes of this section.

34 (e) A timely claim for relief under an ordinance adopted pursuant
35 to this section, in that form as shall be prescribed by the board,
36 shall be filed by the owner with the assessor of the county in which
37 the replacement property is located. No relief under an ordinance
38 adopted pursuant to this section shall be granted unless the claim
39 is filed no later than January 1, 1996, or within three years after

1 the replacement property is acquired or newly constructed,
2 whichever is later.

3 (f) Any taxes that were levied on the replacement property prior
4 to the filing of a claim on the basis of the replacement property's
5 new base year value, and any allowable annual adjustments thereto,
6 shall be canceled or refunded to the claimant to the extent that
7 taxes exceed the amount that would be due when determined on
8 the basis of the adjusted new base year value.

9 (g) This section shall apply to any comparable replacement
10 property of equal or lesser value that is acquired or newly
11 constructed as a replacement for property that has been
12 substantially damaged or destroyed by a disaster occurring on or
13 after October 20, 1991, and to the determination of base year values
14 for the 1991–92 fiscal year and each fiscal year thereafter.

15 SEC. 211. Section 276 of the Revenue and Taxation Code is
16 amended to read:

17 276. (a) Except as otherwise provided by subdivision (b), for
18 property for which the disabled veterans' exemption described in
19 Section 205.5 was available, but for which a timely claim was not
20 filed, a partial exemption shall be applied in accordance with
21 whichever of the following is applicable:

22 (1) Ninety percent of any tax, including any interest or penalty
23 thereon, levied upon that portion of the assessed value of the
24 property that would have been exempt under a timely and
25 appropriate claim shall be canceled or refunded, provided that an
26 appropriate claim for exemption is filed after 5 p.m. on February
27 15 of the calendar year in which the fiscal year begins but on or
28 before the following December 10.

29 (2) If an appropriate claim for exemption is filed after the time
30 period specified in paragraph (1), 85 percent of that portion of any
31 tax, including any interest or penalty thereon, that was levied upon
32 that portion of the assessed value of the property that would have
33 been exempt under a timely and appropriate claim, shall be
34 canceled or refunded. Cancellations made under this paragraph
35 are subject to the provisions of Article 1 (commencing with Section
36 4985) of Chapter 4. Refunds issued under this paragraph are subject
37 to the limitations periods on refunds as described in Article 1
38 (commencing with Section 5096) of Chapter 5.

39 (b) If a late-filed claim for the one-hundred-fifty-thousand-dollar
40 (\$150,000) exemption is filed in conjunction with a timely filed

1 claim for the one-hundred-thousand-dollar (\$100,000) exemption,
2 the amount of any exemption allowed under the late-filed claim
3 under subdivision (a) shall be determined on the basis of that
4 portion of the exemption amount, otherwise available under
5 subdivision (a), that exceeds one hundred thousand dollars
6 (\$100,000).

7 (c) For those claims filed pursuant to subdivision (a) after
8 November 15, the exemption under that subdivision may be applied
9 to the second installment. If that exemption is so applied, the first
10 installment is still delinquent on December 10, and is subject to
11 delinquent penalties provided for in this division if that installment
12 is not timely paid. A refund shall be made to the taxpayer upon a
13 claim submitted to the auditor if the exemption is applied to the
14 second installment and either of the following is true:

15 (1) Both installments are paid on or before December 10.

16 (2) The reduction in taxes resulting from the exemption exceeds
17 the amount of taxes due on the second installment.

18 SEC. 212. Section 6018.6 of the Revenue and Taxation Code
19 is amended to read:

20 6018.6. (a) Any person who received no more than 20 percent
21 of his or her total gross receipts from the alteration of garments
22 during the preceding calendar year is a consumer of, and shall not
23 be considered a retailer within the provisions of this part with
24 respect to, property used or furnished by that person in altering
25 new or used clothing, provided that both of the following apply:

26 (1) That person operates a location or locations as a pickup and
27 delivery point for garment cleaning, or provides spotting and
28 pressing services on the premises but not garment cleaning, or
29 operates a garment cleaning or dyeing plant on the premises.

30 (2) Seventy-five percent or more of that person's total gross
31 receipts represent charges for garment cleaning or dyeing services.

32 (b) Sales tax shall not apply to the charges for alterations
33 specified in subdivision (a). However, that person is a retailer of
34 any other tangible personal property sold to consumers in the
35 regular course of business and sales tax shall apply to the gross
36 receipts from those sales.

37 (c) For the purpose of this section:

38 (1) "Cleaning" means wet cleaning and drycleaning.

39 (2) "Wet cleaning" means the process of cleaning a garment by
40 immersion in water, or by applying manually or by any mechanical

1 device, water, or any detergent and water, or by spraying or
2 brushing the garment with water or water and any detergent, or
3 water vapor, or steam, and includes self-service or coin-operated
4 equipment in whole or in part.

5 (3) “Drycleaning” means the process of cleaning or renovating
6 wearing apparel, feathers, furs, hats, fabrics, household items, or
7 textiles by immersion and agitation, spraying, vaporization, or
8 immersion only, in a volatile, commercially moisture-free solvent
9 or by the use of a volatile or inflammable product, applied either
10 manually or by means of a mechanical appliance and including
11 self-service or coin-operated equipment in whole or in part.

12 (4) “Dyeing” means the process of coloring wearing apparel,
13 feathers, furs, hats, fabrics, or textiles by the use of aniline dyes,
14 mordants, or acids, with or without steam, excluding, however,
15 the use of any dye or combination of dyes which is directly soluble
16 or dispersible in water and which does not require chemical
17 alteration of its structure for application, where that dye or
18 combination of dyes is applied to cotton, viscose rayon, or
19 cuprammonium rayon other than wearing apparel.

20 (5) “Spotting” means the process of removing spots or stains
21 or localized areas of soil from a garment, either before or after,
22 and with or without drycleaning or wet cleaning, by brushing,
23 spraying, or other means of manual or mechanical application,
24 other than immersion, with water, detergents, and volatile or
25 inflammable solvents, chemicals, or any, or all of them.

26 (6) “Pressing” means the process of restoring the garment to
27 the original shape, dimensions, or contour thereof, or to those in
28 which the same was received from the customer, or as directed by
29 the customer, and the removal of wrinkles, stresses, bulges, and
30 impressions, imprint marks and shine, from a garment by the
31 application of pressure, heat, moisture, water vapor, or steam, or
32 all of them, whether applied manually, or by any mechanical
33 means.

34 SEC. 213. Section 6248 of the Revenue and Taxation Code is
35 amended to read:

36 6248. (a) There shall be a rebuttable presumption that any
37 vehicle, vessel, or aircraft bought outside of this state on or after
38 the effective date of this section, and which is brought into
39 California within 12 months from the date of its purchase, was

1 acquired for storage, use, or other consumption in this state and is
2 subject to use tax if any of the following occurs:

3 (1) The vehicle, vessel, or aircraft was purchased by a California
4 resident as defined in Section 516 of the Vehicle Code. For
5 purposes of this section, a closely held corporation or limited
6 liability company shall also be considered a California resident if
7 50 percent or more of the shares or membership interests are held
8 by shareholders or members who are residents of California as
9 defined in Section 516 of the Vehicle Code.

10 (2) In the case of a vehicle, the vehicle was subject to
11 registration under Chapter 1 (commencing with Section 4000) of
12 Division 3 of the Vehicle Code during the first 12 months of
13 ownership.

14 (3) In the case of a vessel or aircraft, that vessel or aircraft was
15 subject to property tax in this state during the first 12 months of
16 ownership.

17 (4) If purchased by a nonresident of California, the vehicle,
18 vessel, or aircraft is used or stored in this state more than one-half
19 of the time during the first 12 months of ownership.

20 (b) This presumption may be controverted by documentary
21 evidence that the vehicle, vessel, or aircraft was purchased for use
22 outside of this state during the first 12 months of ownership. This
23 evidence may include, but is not limited to, evidence of registration
24 of that vehicle, vessel, or aircraft, with the proper authority, outside
25 of this state.

26 (c) This section shall not apply to any vehicle, vessel, or aircraft
27 used in interstate or foreign commerce pursuant to regulations
28 prescribed by the board.

29 (d) The amendments made to this section by the act adding this
30 subdivision shall not apply to any vehicle, vessel, or aircraft that
31 is either purchased, or is the subject of a binding purchase contract
32 that is entered into, on or before the operative date of this
33 subdivision.

34 (e) Notwithstanding subdivision (a), any aircraft or vessel
35 brought into this state exclusively for the purpose of repair, retrofit,
36 or modification shall not be deemed to be acquired for storage,
37 use, or other consumption in this state if the repair, retrofit, or
38 modification is, in the case of a vessel, performed by a repair
39 facility that holds an appropriate permit issued by the board and
40 is licensed to do business by the county in which it is located, or,

1 in the case of an aircraft, performed by a repair station certified
2 by the Federal Aviation Administration or a manufacturer's
3 maintenance facility.

4 (f) The presumption set forth in subdivision (a) may be
5 controverted by documentary evidence that the vehicle was brought
6 into this state for the exclusive purpose of warranty or repair service
7 and was used or stored in this state for that purpose for 30 days or
8 less. The 30-day period begins when the vehicle enters this state,
9 includes any time of travel to and from the warranty or repair
10 facility, and ends when the vehicle is returned to a point outside
11 the state. The documentary evidence shall include a work order
12 stating the dates that the vehicle is in the possession of the warranty
13 or repair facility and a statement by the owner of the vehicle
14 specifying dates of travel to and from the warranty or repair facility.

15 SEC. 214. Section 6363.4 of the Revenue and Taxation Code
16 is amended to read:

17 6363.4. (a) There are exempted from the taxes imposed by
18 this part, the gross receipts from the sale in this state of, and the
19 storage, use, or other consumption in this state of, tangible personal
20 property sold by a thrift store located on a military installation and
21 operated by a designated entity that, in partnership with the United
22 States Department of Defense, provides financial, educational, and
23 other assistance to members of the Armed Forces of the United
24 States, eligible family members, and survivors that are in need.

25 (b) For purposes of this section, "designated entity" means a
26 military welfare society described in Section 1033 of Chapter 53
27 of Part II of Subtitle A of Title 10 of the United States Code.

28 (c) This section shall remain in effect only until January 1, 2014.

29 SEC. 215. Section 7104 of the Revenue and Taxation Code is
30 amended to read:

31 7104. (a) The Transportation Investment Fund (hereafter the
32 fund) is hereby created in the State Treasury. Notwithstanding
33 Section 13340 of the Government Code, the moneys in the fund
34 are continuously appropriated without regard to fiscal years for
35 disbursement in the manner and for the purposes set forth in this
36 section.

37 (b) All of the following shall occur on a quarterly basis:

38 (1) The State Board of Equalization, in consultation with the
39 Department of Finance, shall estimate the amount that is transferred
40 to the General Fund under subdivision (b) of Section 7102 that is

1 attributable to revenue collected for the sale, storage, use, or other
2 consumption in this state of motor vehicle fuel, as defined in
3 Section 7326.

4 (2) The State Board of Equalization shall inform the Controller,
5 in writing, of the amount estimated under paragraph (1).

6 (3) Commencing with the 2003–04 fiscal year, the Controller
7 shall transfer the amount estimated under paragraph (1) from the
8 General Fund to the fund.

9 (c) For each quarter during the period commencing on July 1,
10 2003, and ending on June 30, 2008, the Controller shall make all
11 of the following transfers and apportionments from the funds
12 identified for transfer under paragraph (2) of subdivision (b) in the
13 following order:

14 (1) To the Traffic Congestion Relief Fund created in the State
15 Treasury by Section 14556.5 of the Government Code, the sum
16 of one hundred sixty-nine million five hundred thousand dollars
17 (\$169,500,000), except that the transfer for the final quarter shall
18 be ninety-three million four hundred thousand dollars
19 (\$93,400,000), for a total transfer of three billion three hundred
20 thirteen million nine hundred thousand dollars (\$3,313,900,000).

21 (2) To the Public Transportation Account, a trust fund in the
22 State Transportation Fund, 20 percent of the amount remaining
23 after the transfer required under paragraph (1). Funds transferred
24 under this paragraph shall be made available as follows:

25 (A) To the Department of Transportation, 50 percent for
26 purposes of subdivision (a) or (b) of Section 99315 of the Public
27 Utilities Code, subject to appropriation by the Legislature.

28 (B) To the Controller, 25 percent for allocation pursuant to
29 Section 99314 of the Public Utilities Code. Funds allocated under
30 this subparagraph shall be subject to all of the provisions governing
31 funds allocated under Section 99314 of the Public Utilities Code.
32 For the 2007–08 fiscal year, these funds are continuously
33 appropriated to the Controller for purposes of this subparagraph.

34 (C) To the Controller, 25 percent for allocation pursuant to
35 Section 99313 of the Public Utilities Code. Funds allocated under
36 this subparagraph shall be subject to all of the provisions governing
37 funds allocated under Section 99313 of the Public Utilities Code.
38 For the 2007–08 fiscal year, these funds are continuously
39 appropriated to the Controller for purposes of this subparagraph.

(3) To the Department of Transportation for expenditure for programming for transportation capital improvement projects subject to all of the provisions governing the State Transportation Improvement Program, 40 percent of the amount remaining after the transfer required under paragraph (1), except that in the 2006–07 and 2007–08 fiscal years, the transfer shall be 80 percent of the amount remaining after the transfer required under paragraph (1).

(4) To the Controller for apportionment to the counties, including a city and county, 20 percent of the amount remaining after the transfer required under paragraph (1), except that in the 2006–07 and 2007–08 fiscal years, no transfer may be made under this paragraph. Funds transferred under this paragraph shall be allocated in accordance with the following formulas:

(A) Seventy-five percent of the funds payable under this paragraph shall be apportioned among the counties in the proportion that the number of fee-paid and exempt vehicles that are registered in the county bears to the number of fee-paid and exempt vehicles registered in the state.

(B) Twenty-five percent of the funds payable under this paragraph shall be apportioned among the counties in the proportion that the number of miles of maintained county roads in each county bears to the total number of miles of maintained county roads in the state. For the purposes of apportioning funds under this subparagraph, any roads within the boundaries of a city and county that are not state highways shall be deemed to be county roads.

(5) To the Controller for apportionment to cities, including a city and county, 20 percent of the amount remaining after the transfer required under paragraph (1), except that in the 2006–07 and 2007–08 fiscal years, no transfer may be made under this paragraph. Funds transferred under this paragraph shall be apportioned among the cities in the proportion that the total population of the city bears to the total population of all the cities in the state.

(d) Funds received under paragraph (4) or (5) of subdivision (c) shall be deposited as follows in order to avoid the commingling of those funds with other local funds:

(1) In the case of a city, into the city account that is designated for the receipt of state funds allocated for transportation purposes.

1 (2) In the case of a county, into the county road fund.

2 (3) In the case of a city and county, into a local account that is
3 designated for the receipt of state funds allocated for transportation
4 purposes.

5 (e) Funds allocated to a city, county, or city and county under
6 paragraph (4) or (5) of subdivision (c) shall be used only for street
7 and highway maintenance, rehabilitation, reconstruction, and storm
8 damage repair. For purposes of this section, the following terms
9 have the following meanings:

10 (1) “Maintenance” means either or both of the following:

11 (A) Patching.

12 (B) Overlay and sealing.

13 (2) “Reconstruction” includes any overlay, sealing, or widening
14 of the roadway, if the widening is necessary to bring the roadway
15 width to the desirable minimum width consistent with the
16 geometric design criteria of the department for 3R (reconstruction,
17 resurfacing, and rehabilitation) projects that are not on a freeway,
18 but does not include widening for the purpose of increasing the
19 traffic capacity of a street or highway.

20 (3) “Storm damage repair” is repair or reconstruction of local
21 streets and highways and related drainage improvements that have
22 been damaged due to winter storms and flooding, and construction
23 of drainage improvements to mitigate future roadway flooding and
24 damage problems, in those jurisdictions that have been declared
25 disaster areas by the President of the United States, where the costs
26 of those repairs are ineligible for emergency funding with Federal
27 Emergency Relief (ER) funds or Federal Emergency Management
28 Administration (FEMA) funds.

29 (f) (1) Cities and counties shall maintain their existing
30 commitment of local funds for street and highway maintenance,
31 rehabilitation, reconstruction, and storm damage repair in order to
32 remain eligible for the allocation of funds pursuant to paragraph
33 (4) or (5) of subdivision (c).

34 (2) In order to receive any allocation pursuant to paragraph (4)
35 or (5) of subdivision (c), the city or county shall annually expend
36 from its general fund for street, road, and highway purposes an
37 amount not less than the annual average of its expenditures from
38 its general fund during the 1996–97, 1997–98, and 1998–99 fiscal
39 years, as reported to the Controller pursuant to Section 2151 of
40 the Streets and Highways Code. For purposes of this paragraph,

1 in calculating a city's or county's annual general fund expenditures
2 and its average general fund expenditures for the 1996–97,
3 1997–98, and 1998–99 fiscal years, any unrestricted funds that the
4 city or county may expend at its discretion, including vehicle
5 in-lieu tax revenues and revenues from fines and forfeitures,
6 expended for street and highway purposes shall be considered
7 expenditures from the general fund. One-time allocations that have
8 been expended for street and highway purposes, but which may
9 not be available on an ongoing basis, including revenue provided
10 under the Teeter Plan Bond Law of 1994 (Chapter 6.6
11 (commencing with Section 54773) of Part 1 of Division 2 of Title
12 5 of the Government Code, may not be considered when calculating
13 a city's or county's annual general fund expenditures.

14 (3) For any city incorporated after July 1, 1996, the Controller
15 shall calculate an annual average of expenditure for the period
16 between July 1, 1996, and December 31, 2000, inclusive, that the
17 city was incorporated.

18 (4) For purposes of paragraph (2), the Controller may request
19 fiscal data from cities and counties in addition to data provided
20 pursuant to Section 2151, for the 1996–97, 1997–98, and 1998–99
21 fiscal years. Each city and county shall furnish the data to the
22 Controller not later than 120 days after receiving the request. The
23 Controller may withhold payment to cities and counties that do
24 not comply with the request for information or that provide
25 incomplete data.

26 (5) The Controller may perform audits to ensure compliance
27 with paragraph (2) when deemed necessary. Any city or county
28 that has not complied with paragraph (2) shall reimburse the state
29 for the funds it received during that fiscal year. Any funds withheld
30 or returned as a result of a failure to comply with paragraph (2)
31 shall be reallocated to the other counties and cities whose
32 expenditures are in compliance.

33 (6) If a city or county fails to comply with the requirements of
34 paragraph (2) in a particular fiscal year, the city or county may
35 expend during that fiscal year and the following fiscal year a total
36 amount that is not less than the total amount required to be
37 expended for those fiscal years for purposes of complying with
38 paragraph (2).

39 (7) The allocation made under paragraph (4) or (5) of
40 subdivision (c) shall be expended not later than the end of the fiscal

1 year following the fiscal year in which the allocation was made,
2 and any funds not expended within that period shall be returned
3 to the Controller and shall be reallocated to the other cities and
4 counties pursuant to the allocation formulas set forth in paragraph
5 (4) or (5) of subdivision (c).

6 (g) The Los Angeles County Metropolitan Transportation
7 Authority shall give first priority for using its share of the funds
8 made available under subparagraphs (B) and (C) of paragraph (2)
9 of subdivision (c) to providing the levels of bus service mandated
10 under the consent decree entered into by the authority on October
11 29, 1996, in the case of Labor/Community Strategy Center, et al.
12 v. Los Angeles County Metropolitan Transportation Authority.

13 (h) (1) For the purpose of allocating funds under paragraph (4)
14 or (5) of subdivision (c) to counties, cities, and a city and county,
15 the Controller shall use the most recent population estimates
16 prepared by the Demographic Research Unit of the Department
17 of Finance. For a city that incorporated after January 1, 1998, that
18 does not appear on the most recent population estimates prepared
19 by the Demographic Research Unit, the Controller shall use the
20 population determined for that city under Section 11005.3 of the
21 Revenue and Taxation Code.

22 (2) The amendments made to Section 11005.3 by the act adding
23 this paragraph shall not apply to a population determination under
24 paragraph (1).

25 (i) This section shall become inoperative on the date that all
26 encumbrances incurred for the projects funded under paragraph
27 (3) of subdivision (c) have been liquidated or on June 30, 2008,
28 whichever date is later, and as of the January 1 immediately
29 following that date is repealed.

30 SEC. 216. Section 7104.2 of the Revenue and Taxation Code
31 is amended to read:

32 7104.2. (a) The Transportation Investment Fund (hereafter
33 the fund) in the State Treasury is hereby continued in existence.
34 All revenues transferred to the fund pursuant to Article XIX B of
35 the California Constitution beginning with the 2008–09 fiscal year
36 shall be available for expenditure as provided in this section.
37 Notwithstanding Section 13340 of the Government Code or any
38 other provision of law, moneys in the fund are continuously
39 appropriated without regard to fiscal years for disbursement in the
40 manner and for the purposes set forth in this section.

1 (b) All of the following shall occur on a quarterly basis:

2 (1) The State Board of Equalization, in consultation with the
3 Department of Finance, shall estimate the amount that is transferred
4 to the General Fund under subdivision (b) of Section 7102 that is
5 attributable to revenue collected for the sale, storage, use, or other
6 consumption in this state of motor vehicle fuel, as defined in
7 Section 7326.

8 (2) The State Board of Equalization shall inform the Controller,
9 in writing, of the amount estimated under paragraph (1).

10 (3) Commencing with the 2008–09 fiscal year, the Controller
11 shall transfer the amount estimated under paragraph (1) from the
12 General Fund to the fund.

13 (c) For each quarter, commencing with the 2008–09 fiscal year,
14 the Controller shall make all of the following transfers and
15 apportionments from the fund:

16 (1) To the Public Transportation Account, a trust fund in the
17 State Transportation Fund, 20 percent of the revenues deposited
18 in the fund. Funds transferred under this paragraph shall be made
19 available as follows:

20 (A) Twenty-five percent for purposes of Section 99315 of the
21 Public Utilities Code, subject to appropriation by the Legislature.

22 (B) Thirty-seven and one-half percent to the Controller, for
23 allocation pursuant to Section 99314 of the Public Utilities Code.
24 Funds allocated under this subparagraph shall be subject to all of
25 the provisions governing funds allocated under Section 99314 of
26 the Public Utilities Code. These funds are continuously
27 appropriated to the Controller for purposes of this subparagraph.

28 (C) Thirty-seven and one-half percent to the Controller, for
29 allocation pursuant to Section 99313 of the Public Utilities Code.
30 Funds allocated under this subparagraph shall be subject to all of
31 the provisions governing funds allocated under Section 99313 of
32 the Public Utilities Code. These funds are continuously
33 appropriated to the Controller for purposes of this subparagraph.

34 (D) Notwithstanding subparagraphs (A), (B), and (C), for the
35 2009–10 to 2012–13 fiscal years, inclusive, all funds transferred
36 under this paragraph shall be made available only for purposes of
37 Section 99315 of the Public Utilities Code, subject to appropriation
38 by the Legislature.

39 (2) To the Department of Transportation for expenditure for
40 transportation capital improvement projects subject to all of the

1 rules governing the State Transportation Improvement Program,
2 40 percent of the revenues deposited in the fund.

3 (3) To the Controller for apportionment pursuant to
4 subparagraphs (A) and (B), 40 percent of the revenues deposited
5 in the fund.

6 (A) Of the amount available under this paragraph, 50 percent
7 shall be apportioned by the Controller to the counties, including
8 a city and county, in accordance with the following formulas:

9 (i) Seventy-five percent of the funds payable under this
10 subparagraph shall be apportioned among the counties in the
11 proportion that the number of fee-paid and exempt vehicles that
12 are registered in the county bears to the number of fee-paid and
13 exempt vehicles registered in the state.

14 (ii) Twenty-five percent of the funds payable under this
15 subparagraph shall be apportioned among the counties in the
16 proportion that the number of miles of maintained county roads
17 in each county bears to the total number of miles of maintained
18 county roads in the state. For the purposes of apportioning funds
19 under this subparagraph, any roads within the boundaries of a city
20 and county that are not state highways shall be deemed to be county
21 roads.

22 (B) Of the amount available under this paragraph, 50 percent
23 shall be apportioned by the Controller to cities, including a city
24 and county, in the proportion that the total population of the city
25 bears to the total population of all the cities in the state.

26 (d) Funds received under subparagraph (A) or (B) of paragraph
27 (3) of subdivision (c) shall be deposited as follows in order to avoid
28 the commingling of those funds with other local funds:

29 (1) In the case of a city, into the city account that is designated
30 for the receipt of state funds allocated for transportation purposes.

31 (2) In the case of a county, into the county road fund.

32 (3) In the case of a city and county, into a local account that is
33 designated for the receipt of state funds allocated for transportation
34 purposes.

35 (e) Funds allocated to a city, county, or city and county under
36 subparagraph (A) or (B) of paragraph (3) of subdivision (c) shall
37 be used only for street and highway maintenance, rehabilitation,
38 reconstruction, and storm damage repair. For purposes of this
39 section, the following terms have the following meanings:

40 (1) "Maintenance" means either or both of the following:

1 (A) Patching.

2 (B) Overlay and sealing.

3 (2) “Reconstruction” includes any overlay, sealing, or widening
4 of the roadway, if the widening is necessary to bring the roadway
5 width to the desirable minimum width consistent with the
6 geometric design criteria of the department for 3R (reconstruction,
7 resurfacing, and rehabilitation) projects that are not on a freeway,
8 but does not include widening for the purpose of increasing the
9 traffic capacity of a street or highway.

10 (3) “Storm damage repair” is repair or reconstruction of local
11 streets and highways and related drainage improvements that have
12 been damaged due to winter storms and flooding, and construction
13 of drainage improvements to mitigate future roadway flooding and
14 damage problems, in those jurisdictions that have been declared
15 disaster areas by the President of the United States, where the costs
16 of those repairs are ineligible for emergency funding with Federal
17 Emergency Relief (ER) funds or Federal Emergency Management
18 Administration (FEMA) funds.

19 (f) (1) Cities and counties shall maintain their existing
20 commitment of local funds for street and highway maintenance,
21 rehabilitation, reconstruction, and storm damage repair in order to
22 remain eligible for the allocation of funds pursuant to subparagraph
23 (A) or (B) of paragraph (3) of subdivision (c).

24 (2) In order to receive any allocation pursuant to subparagraph
25 (A) or (B) of paragraph (3) of subdivision (c), the city or county
26 shall annually expend from its general fund for street, road, and
27 highway purposes an amount not less than the annual average of
28 its expenditures from its general fund during the 1996–97,
29 1997–98, and 1998–99 fiscal years, as reported to the Controller
30 pursuant to Section 2151 of the Streets and Highways Code. For
31 purposes of this paragraph, in calculating a city’s or county’s
32 annual general fund expenditures and its average general fund
33 expenditures for the 1996–97, 1997–98, and 1998–99 fiscal years,
34 any unrestricted funds that the city or county may expend at its
35 discretion, including vehicle in-lieu tax revenues and revenues
36 from fines and forfeitures, expended for street and highway
37 purposes shall be considered expenditures from the general fund.
38 One-time allocations that have been expended for street and
39 highway purposes, but which may not be available on an ongoing
40 basis, including revenue provided under the Teeter Plan Bond Law

1 of 1994 (Chapter 6.6 (commencing with Section 54773) of Part 1
2 of Division 2 of Title 5 of the Government Code, may not be
3 considered when calculating a city's or county's annual general
4 fund expenditures.

5 (3) For any city incorporated after July 1, 1996, the Controller
6 shall calculate an annual average of expenditure for the period
7 between July 1, 1996, and December 31, 2000, inclusive, that the
8 city was incorporated.

9 (4) For purposes of paragraph (2), the Controller may request
10 fiscal data from cities and counties in addition to data provided
11 pursuant to Section 2151, for the 1996–97, 1997–98, and 1998–99
12 fiscal years. Each city and county shall furnish the data to the
13 Controller not later than 120 days after receiving the request. The
14 Controller may withhold payment to cities and counties that do
15 not comply with the request for information or that provide
16 incomplete data.

17 (5) The Controller may perform audits to ensure compliance
18 with paragraph (2) when deemed necessary. Any city or county
19 that has not complied with paragraph (2) shall reimburse the state
20 for the funds it received during that fiscal year. Any funds withheld
21 or returned as a result of a failure to comply with paragraph (2)
22 shall be reallocated to the other counties and cities whose
23 expenditures are in compliance.

24 (6) If a city or county fails to comply with the requirements of
25 paragraph (2) in a particular fiscal year, the city or county may
26 expend during that fiscal year and the following fiscal year a total
27 amount that is not less than the total amount required to be
28 expended for those fiscal years for purposes of complying with
29 paragraph (2).

30 (7) The allocation made under subparagraph (A) or (B) of
31 paragraph (3) of subdivision (c) shall be expended not later than
32 the end of the fiscal year following the fiscal year in which the
33 allocation was made, and any funds not expended within that period
34 shall be returned to the Controller and shall be reallocated to the
35 other cities and counties pursuant to the allocation formulas set
36 forth in subparagraph (A) or (B) of paragraph (3) of subdivision
37 (c).

38 (g) For the purpose of allocating funds under subparagraph (A)
39 or (B) of paragraph (3) of subdivision (c) to counties, cities, and
40 a city and county, the Controller shall use the most recent

1 population estimates prepared by the Demographic Research Unit
2 of the Department of Finance. For a city that incorporated after
3 January 1, 2008, that does not appear on the most recent population
4 estimates prepared by the Demographic Research Unit, the
5 Controller shall use the population determined for that city under
6 Section 11005.3.

7 (h) (1) Notwithstanding any other law, the quarterly
8 apportionments scheduled to be made in October 2009 and January
9 2010 pursuant to paragraph (3) of subdivision (c) shall be
10 suspended and deferred until May 31, 2010.

11 (2) For the purpose of meeting the cash obligations associated
12 with ongoing budgeted costs, a city or county may make use of
13 any cash balance in its city or county road fund, including that
14 resulting from the receipt of funds pursuant to the Highway Safety,
15 Traffic Reduction, Air Quality, and Port Security Bond Act of
16 2006 (Chapter 12.49 (commencing with Section 8879.20) of
17 Division 1 of Title 2 of the Government Code (hereafter bond act))
18 for local street and road maintenance, during the period of this
19 suspension, without the use of this cash being reflected as an
20 expenditure of bond act funds, provided the cash is replaced once
21 this suspension is repaid. Nothing in this paragraph shall change
22 the fact that expenditures must be accrued and reflected from the
23 appropriate funding sources for which the moneys were received
24 and meet all requirements of those funding sources.

25 SEC. 217. Section 30461.6 of the Revenue and Taxation Code
26 is amended to read:

27 30461.6. (a) Notwithstanding Section 30461, the board shall
28 transmit the revenue derived from the increase in the cigarette tax
29 rate of one mill (\$0.001) per cigarette imposed by Section 30101
30 on and after January 1, 1994, to the Treasurer to be deposited in
31 the State Treasury to the credit of the Breast Cancer Fund, which
32 fund is hereby created. The Breast Cancer Fund shall consist of
33 two accounts: the Breast Cancer Research Account and the Breast
34 Cancer Control Account. The revenues deposited in the fund shall
35 be divided equally between the two accounts.

36 (b) The moneys in the accounts within the Breast Cancer Fund
37 shall, upon appropriation by the Legislature, be allocated as
38 follows:

1 (1) The moneys in the Breast Cancer Research Account shall
2 be allocated for research with respect to the cause, cure, treatment,
3 earlier detection, and prevention of breast cancer as follows:

4 (A) Ten percent to the Cancer Surveillance Section of the State
5 Department of Public Health for the collection of breast
6 cancer-related data and the conduct of breast cancer-related
7 epidemiological research by the state cancer registry established
8 pursuant to Section 103885 of the Health and Safety Code.

9 (B) Ninety percent to the Breast Cancer Research Program, that
10 is hereby created at the University of California, for the awarding
11 of grants and contracts to researchers for research with respect to
12 the cause, cure, treatment, prevention, and earlier detection of
13 breast cancer and with respect to the cultural barriers to accessing
14 the health care system for early detection and treatment of breast
15 cancer.

16 (2) The moneys in the Breast Cancer Control Account shall be
17 allocated to the Breast Cancer Control Program, that is hereby
18 created for the provision of early breast cancer detection services
19 for uninsured and underinsured women. The Breast Cancer Control
20 Program shall be established in the State Department of Public
21 Health and shall be administered in coordination with the breast
22 and cervical cancer control program established pursuant to Public
23 Law 101-354.

24 (c) The early breast cancer detection services provided by the
25 Breast Cancer Control Program shall include all of the following:

26 (1) Screening, including mammography, of women for breast
27 cancer as an early detection health care measure.

28 (2) After screening, medical referral of screened women and
29 services necessary for definitive diagnosis, including
30 nonradiological techniques or biopsy.

31 (3) If a positive diagnosis is made, then assistance and advocacy
32 shall be provided to help the person obtain necessary treatment.

33 (4) Outreach and health education activities to ensure that
34 uninsured and underinsured women are aware of and appropriately
35 utilize the services provided by the Breast Cancer Control Program.

36 (d) (1) Any entity funded by the Breast Cancer Control Program
37 shall coordinate with other local providers of breast cancer
38 screening, diagnostic, followup, education, and advocacy services
39 to avoid duplication of effort. Any entity funded by the program

1 shall comply with any applicable state and federal standards
2 regarding mammography quality assurance.

3 (2) To the extent required or permitted by federal law, a provider
4 of breast cancer screening or diagnostic services may employ
5 digital mammography technology for the purposes of
6 mammography screening and diagnostic procedures that are
7 conducted prior to January 1, 2014, when film, otherwise known
8 as analog, mammography technology is unavailable. To the extent
9 required or permitted by federal law and notwithstanding paragraph
10 (3) of subdivision (a) of Section 14105.18 of the Welfare and
11 Institutions Code, the payment rate for all mammography screening
12 that is conducted prior to January 1, 2014, shall be limited to the
13 Medi-Cal payment rate for film mammography screening.

14 (e) (1) The State Department of Public Health shall provide for
15 breast cancer screening services at the level of funding budgeted
16 from state and other resources during the fiscal year in which the
17 Legislature has appropriated funds to the department for this
18 purpose.

19 (2) Administrative costs of the State Department of Public
20 Health shall not exceed 10 percent of the funds allocated to the
21 Breast Cancer Control Program created pursuant to paragraph (2)
22 of subdivision (b). Indirect costs of the entities funded by this
23 program shall not exceed 12 percent. The department shall define
24 “indirect costs” in accordance with applicable state and federal
25 law.

26 (f) Any entity funded by the Breast Cancer Control Program
27 shall collect data and maintain records that are determined by the
28 State Department of Public Health to be necessary to facilitate the
29 department’s ability to monitor and evaluate the effectiveness of
30 the entities and the program. Commencing with the program’s
31 second year of operation, the State Department of Public Health
32 shall submit an annual report to the Legislature and any other
33 appropriate entity. The costs associated with this report shall be
34 paid from the allocation made pursuant to paragraph (2) of
35 subdivision (b). The report shall describe the activities and
36 effectiveness of the program and shall include, but not be limited
37 to, the following types of information regarding those served by
38 the program:

39 (1) The number.

40 (2) The ethnic, geographic, and age breakdown.

1 (3) The stages of presentation.

2 (4) The diagnostic and treatment status.

3 (g) The Breast Cancer Control Program shall be conducted in
4 consultation with the Breast Cancer Research Program created
5 pursuant to subparagraph (B) of paragraph (1) of subdivision (b).

6 (h) In implementing the Breast Cancer Control Program, the
7 State Department of Public Health may appoint and consult with
8 an advisory panel appointed by the State Public Health Officer
9 and consisting of one ex officio, nonvoting member from the Breast
10 Cancer Research Program, breast cancer researchers, and
11 representatives from voluntary, nonprofit health organizations,
12 health care professional organizations, breast cancer survivor
13 groups, and breast cancer and health care-related advocacy groups.
14 It is the intent of the Legislature that breast cancer-related survivors
15 and advocates and health advocates for low-income women
16 compose at least one-third of the advisory panel. It is also the intent
17 of the Legislature that the State Department of Public Health
18 collaborate closely with the panel.

19 (i) It is the intent of the Legislature in enacting the Breast Cancer
20 Control Program to decrease cancer mortality rates attributable to
21 breast cancer among uninsured and underinsured women, with
22 special emphasis on low-income, Native American, and minority
23 women. It is also the intent of the Legislature that the communities
24 served by the Breast Cancer Control Program reflect the ethnic,
25 racial, cultural, and geographic diversity of the state and that the
26 Breast Cancer Control Program fund entities where uninsured and
27 underinsured women are most likely to seek their health care.

28 (j) The State Department of Public Health or any entity funded
29 by the Breast Cancer Control Program shall collect personal and
30 medical information necessary to administer this program from
31 any individual applying for services under the program. The
32 information shall be confidential and shall not be disclosed other
33 than for purposes directly connected with the administration of
34 this program or except as otherwise provided by law or pursuant
35 to prior written consent of the subject of the information.

36 The State Department of Public Health or any entity funded by
37 the Breast Cancer Control Program may disclose the confidential
38 information to medical personnel and fiscal intermediaries of the
39 state to the extent necessary to administer this program, and to
40 other state public health agencies or medical researchers when the

1 confidential information is necessary to carry out the duties of
2 those agencies or researchers in the investigation, control, or
3 surveillance of breast cancer.

4 (k) The State Department of Public Health shall adopt
5 regulations to implement this act in accordance with the rulemaking
6 provisions of the Administrative Procedure Act (Chapter 3.5
7 (commencing with Section 11340) of Part 1 of Division 3 of Title
8 2 of the Government Code). The initial adoption of implementing
9 regulations shall be deemed an emergency and shall be considered
10 as necessary for the immediate preservation of the public peace,
11 health and safety, or general welfare, within the meaning of Section
12 11346.1 of the Government Code. Emergency regulations adopted
13 pursuant to this section shall remain in effect for no more than 180
14 days.

15 (l) It is the intent of the Legislature in enacting this section that
16 this section supersede and be operative in place of Section 30461.6
17 of the Revenue and Taxation Code as added by Chapter 660 of the
18 Statutes of 1993.

19 (m) To implement the Breast Cancer Control Program, the State
20 Department of Public Health may contract, to the extent permitted
21 by Section 19130 of the Government Code, with public and private
22 entities, or utilize existing health care service provider enrollment
23 and payment mechanisms, including the Medi-Cal program's fiscal
24 intermediary. However, the Medi-Cal program's fiscal intermediary
25 shall only be utilized if services provided under the program are
26 specifically identified and reimbursed in a manner that does not
27 claim federal financial reimbursement. Any contracts with, and
28 the utilization of, the Medi-Cal program's fiscal intermediary shall
29 not be subject to Chapter 3 (commencing with Section 12100) of
30 Part 2 of Division 2 of the Public Contract Code. Contracts to
31 implement the Breast Cancer Control Program entered into by the
32 State Department of Public Health with entities other than the
33 Medi-Cal program's fiscal intermediary shall not be subject to Part
34 2 (commencing with Section 10100) of Division 2 of the Public
35 Contract Code.

36 SEC. 218. Section 41007 of the Revenue and Taxation Code
37 is amended to read:

38 41007. (a) "Service supplier" shall mean both of the following:

39 (1) A person supplying intrastate telephone communication
40 services to a service user in this state pursuant to California

1 intrastate tariffs and providing access to the “911” emergency
2 system by utilizing the digits 9-1-1.

3 (2) A person supplying Voice over Internet Protocol (VoIP)
4 service to a service user in this state and providing access to the
5 “911” emergency system by utilizing the digits 9-1-1.

6 (b) On and after January 1, 1988, “service supplier” also includes
7 a person supplying intrastate telephone communication services
8 for whom the Public Utilities Commission, by rule or order,
9 modifies or eliminates the requirement for that person to prepare
10 and file California intrastate tariffs.

11 SEC. 219. Section 41011 of the Revenue and Taxation Code
12 is amended to read:

13 41011. (a) “Charges for services” means all charges billed by
14 a service supplier to a service user for intrastate telephone
15 communication services and shall mean local telephone service
16 and include monthly service flat-rate charges for usage, message
17 unit charges and shall mean toll charges, and include intrastate
18 wide area telephone service charges and also means all charges
19 billed by a service supplier to a service user for VoIP service.

20 (b) (1) “Charges for services” shall not include any tax imposed
21 by the United States or by any charter city, charges for service
22 paid by inserting coins in a public coin-operated telephone, and
23 shall not apply to amounts billed to nonsubscribers for coin
24 shortages. Where a coin-operated telephone service is furnished
25 for a guarantee or other periodic amount, such amount is subject
26 to the surcharge imposed by this part.

27 (2) “Charges for services” shall not include charges for intrastate
28 toll calls where bills for such calls originate out of California.

29 (3) “Charges for services” shall not include charges for any
30 nonrecurring, installation, service connection or one-time charge
31 for service or directory advertising, and shall not include private
32 communication service charges, charges for other than
33 communication service, or any charge made by a hotel or motel
34 for service rendered in placing calls for its guests regardless of
35 how such hotel or motel charge is denominated or characterized
36 by an applicable tariff of the Public Utilities Commission of this
37 state.

38 (4) “Charges for services” shall not include charges for basic
39 exchange line service for lifeline services.

1 SEC. 220. Section 41030 of the Revenue and Taxation Code
2 is amended to read:

3 41030. The Department of General Services shall determine
4 annually, on or before October 1, a surcharge rate that it estimates
5 will produce sufficient revenue to fund the current fiscal year's
6 "911" costs. The surcharge rate shall be determined by dividing
7 the costs, including incremental costs, the Department of General
8 Services estimates for the current fiscal year of "911" plans
9 approved pursuant to Section 53115 of the Government Code, less
10 the available balance in the State Emergency Telephone Number
11 Account in the General Fund, by its estimate of the charges for
12 intrastate telephone communication services and VoIP service to
13 which the surcharge will apply for the period of January 1 to
14 December 31, inclusive, of the next succeeding calendar year, but
15 in no event shall the surcharge rate in any year be greater than
16 three-quarters of 1 percent nor less than one-half of 1 percent.

17 SEC. 221. Section 41136 of the Revenue and Taxation Code
18 is amended to read:

19 41136. Funds in the State Emergency Telephone Number
20 Account shall, when appropriated by the Legislature, be spent
21 solely for the following purposes:

22 (a) A minimum of one-half of 1 percent of the charges for
23 intrastate telephone communications services and VoIP service to
24 which the surcharge applies, as follows:

- 25 (1) To pay refunds authorized by this part.
26 (2) To pay the State Board of Equalization for the cost of the
27 administration of this part.
28 (3) To pay the office of the State Chief Information Officer for
29 its costs in administration of the "911" emergency telephone
30 number system.
31 (4) To pay bills submitted to the office of the State Chief
32 Information Officer by service suppliers or communications
33 equipment companies for the installation of, and ongoing expenses
34 for, the following communications services supplied to local
35 agencies in connection with the "911" emergency phone number
36 system:
37 (A) A basic system.
38 (B) A basic system with telephone central office identification.
39 (C) A system employing automatic call routing.
40 (D) Approved incremental costs.

1 (5) To pay claims of local agencies for approved incremental
2 costs, not previously compensated for by another governmental
3 agency.

4 (6) To pay claims of local agencies for incremental costs and
5 amounts, not previously compensated for by another governmental
6 agency, incurred prior to the effective date of this part, for the
7 installation and ongoing expenses for the following communication
8 services supplied in connection with the “911” emergency
9 telephone number system:

10 (A) A basic system.

11 (B) A basic system with telephone central office identification.

12 (C) A system employing automatic call routing.

13 (D) Approved incremental costs. Incremental costs shall not be
14 allowed unless the costs are concurred in by the office of the State
15 Chief Information Officer.

16 (b) (1) For the purposes of paragraph (5) of subdivision (a), the
17 term incremental costs shall include a maximum of one-quarter of
18 1 percent of the charges for intrastate telephone communications
19 services and VoIP service to which the surcharge applies for a
20 one-time payment to Primary Public Safety Answering Points for
21 the cost necessary to recruit and train additional personnel
22 necessary to accept wireless enhanced “911” calls from within
23 their jurisdiction routed directly to their call centers.

24 (2) Funds allocated pursuant to this subdivision shall
25 supplement, and not supplant, existing funding for these services.

26 (3) This subdivision shall remain in effect only until December
27 31, 2011.

28 SEC. 222. Section 149.9 of the Streets and Highways Code is
29 amended to read:

30 149.9. (a) Pursuant to Section 149.7 and the memorandum of
31 understanding between the Los Angeles County Metropolitan
32 Transportation Authority (LACMTA), the United States
33 Department of Transportation, and the department, as adopted on
34 July 24, 2008, and any subsequent, mutually agreed upon changes
35 to that memorandum, the LACMTA may operate a value-pricing
36 and transit development demonstration program involving
37 high-occupancy toll (HOT) lanes to be conducted, administered,
38 developed, and operated on State Highway Routes 10 and 110 in
39 Los Angeles County by the LACMTA.

1 (b) The LACMTA shall implement the program in cooperation
2 with the department and the active participation of the Department
3 of the California Highway Patrol, pursuant to a cooperative
4 agreement that addresses all matters related to design, construction,
5 maintenance, and operation of state highway system facilities in
6 connection with the value-pricing and transit program. With the
7 consent of the department, the board of the LACMTA shall
8 establish appropriate performance measures, such as speed or travel
9 times, for the purpose of ensuring optimal use of the HOT lanes
10 without adversely affecting other traffic on the state highway
11 system.

12 (c) The LACMTA and the department may implement the
13 demonstration program under the following conditions:

14 (1) The value-pricing program may be operated on State
15 Highway Routes 10 and 110 in Los Angeles County on designated
16 high-occupancy vehicle (HOV) lanes.

17 (2) (A) Single-occupant vehicles, or those vehicles that do not
18 meet minimum occupancy requirements, may be authorized to
19 enter and use the HOV lanes in the identified corridors, under
20 conditions as determined by the LACMTA.

21 (B) The LACMTA may not change the vehicle occupancy
22 requirement for access to the HOV lanes in the identified corridors
23 during the demonstration period that is authorized under this
24 section.

25 (3) As part of the demonstration program, each proposed HOT
26 lane shall have nontolled alternative lanes available for public use
27 in the same corridor as the proposed HOT lanes.

28 (4) The LACMTA shall implement a public outreach and
29 communications plan in order to solicit public input into the
30 development of the demonstration program.

31 (5) In implementing the program, the LACMTA shall identify
32 the affected communities in the respective corridors and work with
33 those communities to identify impacts and develop mitigation
34 measures.

35 (6) The amount of the toll shall be established by the LACMTA,
36 and collected and administered in a manner determined by the
37 LACMTA. The LACMTA shall conduct a public hearing 30 days
38 prior to setting or increasing the toll.

39 (7) The LACMTA shall assess the impacts of the program on
40 commuters of low income and shall provide mitigation to those

1 impacted commuters. Mitigation measures may include, but are
2 not limited to, reduced toll charges and toll credits for transit users.
3 Eligible commuters for reduced toll charges or toll credits for
4 transit users shall meet the eligibility requirements for assistance
5 programs under Chapter 2 (commencing with Section 11200) or
6 Chapter 3 (commencing with Section 12000) of Part 3 of, Part 5
7 (commencing with Section 17000) of, or Chapter 10 (commencing
8 with Section 18900), Chapter 10.1 (commencing with Section
9 18930), or Chapter 10.3 (commencing with Section 18937) of Part
10 6 of, Division 9 of the Welfare and Institutions Code.

11 (8) Toll paying commuters shall have the option to purchase
12 any necessary toll paying equipment, prepay tolls, and renew toll
13 payments by cash or by using a credit card.

14 (9) The LACMTA may operate the demonstration program until
15 January 15, 2013, during which time it may not issue bonds for
16 the demonstration program.

17 (10) The LACMTA and the department shall report to the
18 Legislature by December 31, 2012. The report shall include, but
19 not be limited to, a summary of the demonstration program, a
20 survey of its users, the impact on carpoolers, revenues generated,
21 how transit service or alternative modes of transportation were
22 impacted, any potential effect on traffic congestion in the HOV
23 lane and in the neighboring lanes, the number of toll-paying
24 vehicles that utilized the HOT lanes, any potential reductions in
25 the greenhouse gas emissions that are attributable to congestion
26 reduction resulting from the HOT lane demonstration project, and
27 a description of the mitigation measures on the affected
28 communities and commuters in this demonstration program.

29 (11) Pursuant to Section 149.7, the revenue generated from the
30 program may be available to the LACMTA for the direct expenses
31 related to the maintenance, administration, and operation, including
32 collection and enforcement, of the demonstration program.
33 Administrative expenses shall not exceed 3 percent of the revenues.

34 (12) All remaining revenue generated by the demonstration
35 program shall be used in the corridor from which the revenue was
36 generated exclusively for preconstruction, construction, and other
37 related costs of high-occupancy vehicle facilities and the
38 improvement of transit service in the corridor, including, but not
39 limited to, support for transit operations pursuant to an expenditure
40 plan adopted by the LACMTA.

1 (13) This section shall not prevent the department or any local
2 agency from constructing facilities that compete with the HOT
3 lane demonstration project, and the LACMTA shall not be entitled
4 to compensation for adverse effects on toll revenue due to those
5 facilities.

6 SEC. 223. Section 30918 of the Streets and Highways Code
7 is amended to read:

8 30918. (a) It is the intention of the Legislature to maintain
9 tolls on all of the bridges specified in Section 30910 at rates
10 sufficient to meet any obligation to the holders of bonds secured
11 by the bridge toll revenues. The authority shall retain authority to
12 set the toll schedule as may be necessary to meet those bond
13 obligations. The authority shall provide at least 30 days' notice to
14 the transportation policy committee of each house of the
15 Legislature and shall hold a public hearing before adopting a toll
16 schedule reflecting the increased toll rate.

17 (b) The authority shall increase the toll rates specified in the
18 adopted toll schedule in order to meet its obligations and covenants
19 under any bond resolution or indenture of the authority for any
20 outstanding toll bridge revenue bonds issued by the authority and
21 the requirements of any constituent instruments defining the rights
22 of holders of related obligations of the authority entered into
23 pursuant to Section 5922 of the Government Code and,
24 notwithstanding Section 30887 or subdivision (c) of Section 30916
25 of this code, or any other law, may increase the toll rates specified
26 in the adopted toll schedule to provide funds for the planning,
27 design, construction, operation, maintenance, repair, replacement,
28 rehabilitation, and seismic retrofit of the state-owned toll bridges
29 specified in Section 30910 of this code, to provide funding to meet
30 the requirements of Sections 30884 and 30911 of this code, and
31 to provide funding to meet the requirements of voter-approved
32 regional measures pursuant to Sections 30914 and 30921 of this
33 code.

34 (c) The authority's toll structure for the state-owned toll bridges
35 specified in Section 30910 may vary from bridge to bridge and
36 may include discounts for vehicles classified by the authority as
37 high-occupancy vehicles, notwithstanding any other law.

38 (d) If the authority establishes high-occupancy vehicle lane fee
39 discounts or access for vehicles classified by the authority as
40 high-occupancy vehicles for any bridge, the authority shall

1 collaborate with the department to reach agreement on how the
2 occupancy requirements shall apply on each segment of highway
3 that connects with that bridge.

4 (e) All tolls referred to in this section and Sections 30916,
5 31010, and 31011 may be treated by the authority as a single
6 revenue source for accounting and administrative purposes and
7 for the purposes of any bond indenture or resolution and any
8 agreement entered into pursuant to Section 5922 of the Government
9 Code.

10 (f) It is the intent of the Legislature that the authority should
11 consider the needs and requirements of both its electronic and
12 cash-paying customers when it designates toll payment options at
13 the toll plazas for the toll bridges under its jurisdiction.

14 SEC. 224. Section 1611 of the Unemployment Insurance Code
15 is amended to read:

16 1611. Moneys in the Employment Training Fund shall be
17 expended only for the purposes of Chapter 3.5 (commencing with
18 Section 10200) of Part 1 of Division 3, and for the costs of
19 administering this article and Section 976.6, except those moneys
20 may be used for any of the following:

21 (a) With the approval of the Legislature, the fund or
22 contributions to it may be used to pay interest charged on federal
23 loans to the Unemployment Fund.

24 (b) Commencing with allocations made to the Employment
25 Training Panel in the 1992–93 fiscal year, any moneys allocated
26 to the panel in a fiscal year that are not encumbered by the panel
27 in that fiscal year shall revert to the Unemployment Insurance
28 Fund.

29 (c) It is the intent of the Legislature that the panel shall closely
30 monitor program performance and expenditures for employment
31 training programs administered by the panel, and that the panel
32 shall expeditiously disencumber funds that are not needed for
33 employment training program completion. Commencing with the
34 1992–93 fiscal year, those moneys that are disencumbered during
35 the fiscal year that are not reencumbered during the same fiscal
36 year shall revert to the Unemployment Insurance Fund.

37 (d) Notwithstanding any other law, the Controller may use the
38 moneys in the Employment Training Fund for loans to the General
39 Fund as provided in Sections 16310 and 16381 of the Government
40 Code. However, interest shall be paid on all moneys loaned to the

1 General Fund from the Employment Training Fund. Interest
2 payable shall be computed at a rate determined by the Pooled
3 Money Investment Board to be the current earning rate of the fund
4 from which loaned. This subdivision does not authorize any transfer
5 that will interfere with the carrying out of the object for which the
6 Employment Training Fund was created.

7 SEC. 225. Section 10214.6 of the Unemployment Insurance
8 Code is amended to read:

9 10214.6. (a) The panel shall establish the Partnership for
10 Workforce Recovery Training (PWRT) for the purposes of
11 supporting and implementing the workforce development goals
12 set forth in the federal American Recovery and Reinvestment Act
13 of 2009 (ARRA) (P.L. 111-5). The panel shall develop and publish
14 guidelines for implementation of the PWRT, consistent with, and
15 including adequate fiscal and accounting controls, as prescribed
16 in subdivision (g) of Section 10205.

17 (b) The panel may allocate any funds it receives pursuant to the
18 federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801
19 et seq.) and the ARRA to support the activities of the PWRT. Any
20 funds received by the panel pursuant to this section shall be
21 deposited into a separate account established by the department
22 in the State Treasury, and used for the purposes of this section.

23 (c) The panel may adopt any regulations necessary to implement
24 this section, but any regulations so adopted are exempt from the
25 requirements of Chapter 3.5 (commencing with Section 11340) of
26 Part 1 of Division 3 of Title 2 of the Government Code.

27 (d) The panel may solicit proposals and enter into contracts or
28 other agreements to secure funding for the purposes of this section,
29 but those proposals, contracts, and agreements shall be exempt
30 from any competitive bidding requirements otherwise prescribed
31 in statute.

32 SEC. 226. Section 4465 of the Vehicle Code is amended to
33 read:

34 4465. (a) A legal owner of record of a vehicle may request,
35 and the department shall furnish, information regarding the current
36 registration status of the vehicle, including the license plate number
37 and address of the registered owner of the vehicle. The department
38 may charge a fee to pay for the cost of furnishing this information.

39 (b) (1) By January 1, 2010, the department shall be in full
40 compliance with the federal Anti Car Theft Act of 1992 (P.L.

1 102-519) and the United States Department of Justice (DOJ) rules
2 governing the federal National Motor Vehicle Title Information
3 System (NMVTIS) (49 U.S.C. Sec. 30501 et seq.), to the extent
4 practicable.

5 (2) Notwithstanding paragraph (1), by January 1, 2010, the
6 department shall eliminate any restrictions to consumer access to
7 titling, branding, and theft information provided by the department
8 to NMVTIS, to ensure that prospective purchasers have instant
9 and reliable access to California's data.

10 SEC. 227. Section 4466 of the Vehicle Code is amended to
11 read:

12 4466. (a) The department shall not issue a duplicate or
13 substitute certificate of title or license plate if, after a search of the
14 records of the department, the registered owner's address, as
15 submitted on the application, is different from that which appears
16 in the records of the department, unless the registered owner applies
17 in person and presents all of the following:

18 (1) Proof of ownership of the vehicle that is acceptable to the
19 department. Proof of ownership may be the certificate of title,
20 registration certificate, or registration renewal notice, or a facsimile
21 or photocopy of any of those documents, if the facsimile or
22 photocopy matches the vehicle record of the department.

23 (2) A driver's license or identification card containing a picture
24 of the licensee or cardholder issued to the registered owner by the
25 department pursuant to Chapter 1 (commencing with Section
26 12500) of Division 6. The department shall conduct a search of
27 its records to verify the authenticity of any document submitted
28 under this paragraph.

29 (A) If the registered owner is a resident of another state or
30 country, the registered owner shall present a driver's license or
31 identification card issued by that state or country. In addition, the
32 registered owner shall provide photo documentation in the form
33 of a valid passport, military identification card, identification card
34 issued by a state or United States government agency, student
35 identification card issued by a college or university, or
36 identification card issued by a California-based employer. If a
37 resident of another state is unable to present the required photo
38 identification, the department shall verify the authenticity of the
39 driver's license or identification card by contacting the state that
40 issued the driver's license or identification card.

1 (B) If the registered owner is not an individual, the person
2 submitting the application shall submit the photo identification
3 required pursuant to this paragraph, as well as documentation
4 acceptable to the department that demonstrates that the person is
5 employed by an officer of the registered owner.

6 (3) If the application is for the purpose of replacing a license
7 plate that was stolen, a copy of a police report identifying the plate
8 as stolen.

9 (4) If the application is for the purpose of replacing a certificate
10 of title or license plate that was mutilated or destroyed, the
11 remnants of the mutilated or destroyed document or plate.

12 (5) If the department has a record of a prior issuance of a
13 duplicate or substitute certificate of title or license plate for the
14 vehicle within the past 90 days, a copy of a report from the
15 Department of the California Highway Patrol verifying the vehicle
16 identification number of the vehicle.

17 (b) Subdivision (a) does not apply if any of the following
18 applies:

19 (1) The registered owner's name, address, and driver's license
20 or identification card number submitted on the application match
21 the name, address, and driver's license or identification card
22 number contained in the department's records.

23 (2) An application for a duplicate or substitute certificate of title
24 or license plate is submitted by or through one of the following:

25 (A) A legal owner, if the legal owner is not the same person as
26 the registered owner or as the lessee under Section 4453.5.

27 (B) A dealer or an agent of the dealer.

28 (C) A dismantler.

29 (D) An insurer or an agent of the insurer.

30 (E) A salvage pool.

31 (c) At the discretion of the department, subdivision (a) does not
32 apply in any of the following circumstances:

33 (1) An application for a duplicate or substitute certificate of title
34 or license plate is submitted by a licensed registration service
35 representing any of the following:

36 (A) A person or entity listed in subparagraphs (A) to (E),
37 inclusive, of paragraph (2) of subdivision (b).

38 (B) A business entity recognized under the laws of this state or
39 the laws of any foreign or domestic jurisdiction whose laws are in
40 parity with the laws of this state.

1 (C) A court-appointed bankruptcy referee.

2 (D) A person who is an individual, is not included in
3 subparagraphs (A) to (C), inclusive, and submits to the licensed
4 registration service an application with a signature that is validated
5 by a notary public. The licensed registration service shall maintain
6 full and complete records of its transactions conducted pursuant
7 to this subparagraph and shall make those records available for
8 inspection by an investigator of the Department of Motor Vehicles,
9 investigator of the Department of the California Highway Patrol,
10 a city police department, a county sheriff's office, or a district
11 attorney's office, if the investigator requests access to the record
12 and the request is for the purpose of a criminal investigation.

13 (2) The vehicle is registered under the International Registration
14 Plan pursuant to Section 8052 or under the Permanent Fleet
15 Registration program pursuant to Article 9.5 (commencing with
16 Section 5301).

17 (3) The vehicle is an implement of husbandry, as defined in
18 Section 36000, or a tow dolly, or has been issued an identification
19 plate under Section 5014 or 5014.1.

20 (d) The department shall issue one or more license plates only
21 to the registered owner or lessee. The department shall issue the
22 certificate of title only to the legal owner, or if none, then to the
23 registered owner, as shown on the department's records.

24 SEC. 228. Section 11709.4 of the Vehicle Code is amended to
25 read:

26 11709.4. (a) When a dealer purchases or obtains a vehicle in
27 trade in a retail sale or lease transaction and the vehicle is subject
28 to a prior credit or lease balance, all of the following apply:

29 (1) If the dealer agreed to pay a specified amount on the prior
30 credit or lease balance owing on the vehicle purchased or obtained
31 in trade, and the agreement to pay the specified amount is contained
32 in a written agreement documenting the transaction, the dealer
33 shall tender the agreed upon amount as provided in the written
34 agreement to the lessor registered in accordance with Section
35 4453.5, or to the legal owner reflected on the ownership certificate,
36 or to the designee of that lessor or legal owner of the vehicle
37 purchased or obtained in trade within 21 calendar days of
38 purchasing or obtaining the vehicle in trade.

39 (2) If the dealer did not set forth an agreement regarding
40 payment of a prior credit or lease balance owed on the vehicle

1 purchased or obtained in trade, in a written agreement documenting
2 the transaction, the dealer shall tender to the lessor registered in
3 accordance with Section 4453.5, or to the legal owner reflected
4 on the ownership certificate, or to the designee of that lessor or
5 legal owner of the vehicle purchased or obtained in trade, an
6 amount necessary to discharge the prior credit or lease balance
7 owing on the vehicle purchased or obtained in trade within 21
8 calendar days of purchasing or obtaining the vehicle in trade.

9 (3) The time period specified in paragraph (1) or (2) may be
10 shortened if the dealer and consumer agree, in writing, to a shorter
11 time period.

12 (4) A dealer shall not sell, consign for sale, or transfer any
13 ownership interest in the vehicle purchased or obtained in trade
14 until an amount necessary to discharge the prior credit or lease
15 balance owing on the vehicle has been tendered to the lessor
16 registered in accordance with Section 4453.5, or to the legal owner
17 reflected on the ownership certificate, or to the designee of that
18 lessor or legal owner of the vehicle purchased or obtained in trade.

19 (b) A dealer does not violate this section if the dealer reasonably
20 and in good faith gives notice of rescission of the contract
21 promptly, but no later than 21 days after the date on which the
22 vehicle was purchased or obtained in trade, and the contract is
23 thereafter rescinded on any of the grounds in Section 1689 of the
24 Civil Code.

25 SEC. 229. Section 13386 of the Vehicle Code is amended to
26 read:

27 13386. (a) (1) The Department of Motor Vehicles shall certify
28 or cause to be certified ignition interlock devices required by
29 Article 5 (commencing with Section 23575) of Chapter 2 of
30 Division 11.5 and publish a list of approved devices.

31 (2) (A) The Department of Motor Vehicles shall ensure that
32 ignition interlock devices that have been certified according to the
33 requirements of this section continue to meet certification
34 requirements. The department may periodically require
35 manufacturers to indicate in writing whether the devices continue
36 to meet certification requirements.

37 (B) The department may use denial of certification, suspension
38 or revocation of certification, or decertification of an ignition
39 interlock device in another state as an indication that the

1 certification requirements are not met, if either of the following
2 apply:

3 (i) The denial of certification, suspension or revocation of
4 certification, or decertification in another state constitutes a
5 violation by the manufacturer of Article 2.55 (commencing with
6 Section 125.00) of Chapter 1 of Division 1 of Title 13 of the
7 California Code of Regulations.

8 (ii) The denial of certification for an ignition interlock device
9 in another state was due to a failure of an ignition interlock device
10 to meet the standards adopted by the regulation set forth in clause
11 (i), specifically Sections 1 and 2 of the model specification for
12 breath alcohol ignition interlock devices, as published by notice
13 in the Federal Register, Vol. 57, No. 67, Tuesday, April 7, 1992,
14 on pages 11774 to 11787, inclusive.

15 (C) Failure to continue to meet certification requirements shall
16 result in suspension or revocation of certification of ignition
17 interlock devices.

18 (b) (1) A manufacturer shall not furnish an installer, service
19 center, technician, or consumer with technology or information
20 that allows a device to be used in a manner that is contrary to the
21 purpose for which it is certified.

22 (2) Upon a violation of paragraph (1), the department shall
23 suspend or revoke the certification of the ignition interlock device
24 that is the subject of that violation.

25 (c) An installer, service center, or technician shall not tamper
26 with, change, or alter the functionality of the device from its
27 certified criteria.

28 (d) The department shall utilize information from an independent
29 laboratory to certify ignition interlock devices on or off the
30 premises of the manufacturer or manufacturer's agent, in
31 accordance with the guidelines. The cost of certification shall be
32 borne by the manufacturers of ignition interlock devices. If the
33 certification of a device is suspended or revoked, the manufacturer
34 of the device shall be responsible for, and shall bear the cost of,
35 the removal of the device and the replacement of a certified device
36 of the manufacturer or another manufacturer.

37 (e) No model of ignition interlock device shall be certified unless
38 it meets the accuracy requirements and specifications provided in
39 the guidelines adopted by the National Highway Traffic Safety
40 Administration.

1 (f) All manufacturers of ignition interlock devices that meet the
2 requirements of subdivision (e) and are certified in a manner
3 approved by the Department of Motor Vehicles, who intend to
4 market the devices in this state, first shall apply to the Department
5 of Motor Vehicles on forms provided by that department. The
6 application shall be accompanied by a fee in an amount not to
7 exceed the amount necessary to cover the costs incurred by the
8 department in carrying out this section.

9 (g) A manufacturer and a manufacturer's agent certified by the
10 department to provide ignition interlock devices shall provide each
11 year to the department information on the number of false positives
12 and the time to reset the device. The department shall use this
13 information in evaluating the continued certification of an ignition
14 interlock device.

15 (h) The department shall ensure that standard forms and
16 procedures are developed for documenting decisions and
17 compliance and communicating results to relevant agencies. These
18 forms shall include all of the following:

19 (1) An "Option to Install," to be sent by the Department of
20 Motor Vehicles to repeat offenders along with the mandatory order
21 of suspension or revocation. This shall include the alternatives
22 available for early license reinstatement with the installation of an
23 ignition interlock device and shall be accompanied by a toll-free
24 telephone number for each manufacturer of a certified ignition
25 interlock device. Information regarding approved installation
26 locations shall be provided to drivers by manufacturers with
27 ignition interlock devices that have been certified in accordance
28 with this section.

29 (2) A "Verification of Installation" to be returned to the
30 department by the reinstating offender upon application for
31 reinstatement. Copies shall be provided for the manufacturer or
32 the manufacturer's agent.

33 (3) A "Notice of Noncompliance" and procedures to ensure
34 continued use of the ignition interlock device during the restriction
35 period and to ensure compliance with maintenance requirements.
36 The maintenance period shall be standardized at 60 days to
37 maximize monitoring checks for equipment tampering.

38 (i) Every manufacturer and manufacturer's agent certified by
39 the department to provide ignition interlock devices shall adopt
40 fee schedules that provide for the payment of the costs of the device

1 by applicants in amounts commensurate with the applicant's ability
2 to pay.

3 SEC. 230. Section 21455.5 of the Vehicle Code is amended to
4 read:

5 21455.5. (a) The limit line, the intersection, or a place
6 designated in Section 21455, where a driver is required to stop,
7 may be equipped with an automated enforcement system if the
8 governmental agency utilizing the system meets all of the following
9 requirements:

10 (1) Identifies the system by signs that clearly indicate the
11 system's presence and are visible to traffic approaching from all
12 directions, or posts signs at all major entrances to the city,
13 including, at a minimum, freeways, bridges, and state highway
14 routes.

15 (2) If it locates the system at an intersection, and ensures that
16 the system meets the criteria specified in Section 21455.7.

17 (b) Prior to issuing citations under this section, a local
18 jurisdiction utilizing an automated traffic enforcement system shall
19 commence a program to issue only warning notices for 30 days.
20 The local jurisdiction shall also make a public announcement of
21 the automated traffic enforcement system at least 30 days prior to
22 the commencement of the enforcement program.

23 (c) Only a governmental agency, in cooperation with a law
24 enforcement agency, may operate an automated enforcement
25 system. As used in this subdivision, "operate" includes all of the
26 following activities:

27 (1) Developing uniform guidelines for screening and issuing
28 violations and for the processing and storage of confidential
29 information, and establishing procedures to ensure compliance
30 with those guidelines.

31 (2) Performing administrative functions and day-to-day
32 functions, including, but not limited to, all of the following:

33 (A) Establishing guidelines for selection of location.

34 (B) Ensuring that the equipment is regularly inspected.

35 (C) Certifying that the equipment is properly installed and
36 calibrated, and is operating properly.

37 (D) Regularly inspecting and maintaining warning signs placed
38 under paragraph (1) of subdivision (a).

39 (E) Overseeing the establishment or change of signal phases
40 and the timing thereof.

1 (F) Maintaining controls necessary to assure that only those
2 citations that have been reviewed and approved by law enforcement
3 are delivered to violators.

4 (d) The activities listed in subdivision (c) that relate to the
5 operation of the system may be contracted out by the governmental
6 agency, if it maintains overall control and supervision of the
7 system. However, the activities listed in paragraph (1) of, and
8 subparagraphs (A), (D), (E), and (F) of paragraph (2) of,
9 subdivision (c) may not be contracted out to the manufacturer or
10 supplier of the automated enforcement system.

11 (e) (1) Notwithstanding Section 6253 of the Government Code,
12 or any other provision of law, photographic records made by an
13 automated enforcement system shall be confidential, and shall be
14 made available only to governmental agencies and law enforcement
15 agencies and only for the purposes of this article.

16 (2) Confidential information obtained from the Department of
17 Motor Vehicles for the administration or enforcement of this article
18 shall be held confidential, and may not be used for any other
19 purpose.

20 (3) Except for court records described in Section 68152 of the
21 Government Code, the confidential records and information
22 described in paragraphs (1) and (2) may be retained for up to six
23 months from the date the information was first obtained, or until
24 final disposition of the citation, whichever date is later, after which
25 time the information shall be destroyed in a manner that will
26 preserve the confidentiality of any person included in the record
27 or information.

28 (f) Notwithstanding subdivision (e), the registered owner or any
29 individual identified by the registered owner as the driver of the
30 vehicle at the time of the alleged violation shall be permitted to
31 review the photographic evidence of the alleged violation.

32 (g) (1) A contract between a governmental agency and a
33 manufacturer or supplier of automated enforcement equipment
34 may not include provision for the payment or compensation to the
35 manufacturer or supplier based on the number of citations
36 generated, or as a percentage of the revenue generated, as a result
37 of the use of the equipment authorized under this section.

38 (2) Paragraph (1) does not apply to a contract that was entered
39 into by a governmental agency and a manufacturer or supplier of
40 automated enforcement equipment before January 1, 2004, unless

1 that contract is renewed, extended, or amended on or after January
2 1, 2004.

3 SEC. 231. Section 27602 of the Vehicle Code is amended to
4 read:

5 27602. (a) A person shall not drive a motor vehicle if a
6 television receiver, a video monitor, or a television or video screen,
7 or any other similar means of visually displaying a television
8 broadcast or video signal that produces entertainment or business
9 applications, is operating and is located in the motor vehicle at a
10 point forward of the back of the driver's seat, or is operating and
11 the monitor, screen, or display is visible to the driver while driving
12 the motor vehicle.

13 (b) Subdivision (a) does not apply to the following equipment
14 when installed in a vehicle:

15 (1) A vehicle information display.

16 (2) A global positioning display.

17 (3) A mapping display.

18 (4) A visual display used to enhance or supplement the driver's
19 view forward, behind, or to the sides of a motor vehicle for the
20 purpose of maneuvering the vehicle.

21 (5) A television receiver, video monitor, television or video
22 screen, or any other similar means of visually displaying a
23 television broadcast or video signal, if that equipment satisfies one
24 of the following requirements:

25 (A) The equipment has an interlock device that, when the motor
26 vehicle is driven, disables the equipment for all uses except as a
27 visual display as described in paragraphs (1) to (4), inclusive.

28 (B) The equipment is designed, operated, and configured in a
29 manner that prevents the driver of the motor vehicle from viewing
30 the television broadcast or video signal while operating the vehicle
31 in a safe and reasonable manner.

32 (6) A mobile digital terminal that is fitted with an opaque
33 covering that does not allow the driver to view any part of the
34 display while driving, even though the terminal may be operating,
35 installed in a vehicle that is owned or operated by any of the
36 following:

37 (A) An electrical corporation, as defined in Section 218 of the
38 Public Utilities Code.

39 (B) A gas corporation, as defined in Section 222 of the Public
40 Utilities Code.

1 (C) A sewer system corporation, as defined in Section 230.6 of
2 the Public Utilities Code.

3 (D) A telephone corporation, as defined in Section 234 of the
4 Public Utilities Code.

5 (E) A water corporation, as defined in Section 241 of the Public
6 Utilities Code.

7 (F) A local publicly owned electric utility, as defined in Section
8 224.3 of the Public Utilities Code.

9 (G) A city, joint powers agency, or special district, if that local
10 entity uses the vehicle solely in the provision of sewer service, gas
11 service, water service, or wastewater service.

12 (c) Subdivision (a) does not apply to a mobile digital terminal
13 installed in an authorized emergency vehicle or to a motor vehicle
14 providing emergency road service or roadside assistance.

15 (d) Subdivision (a) does not apply to a mobile digital terminal
16 installed in a vehicle when the vehicle is deployed in an emergency
17 to respond to an interruption or impending interruption of electrical,
18 natural gas, telephone, sewer, water, or wastewater service, and
19 the vehicle is owned or operated by any of the following:

20 (1) An electrical corporation, as defined in Section 218 of the
21 Public Utilities Code.

22 (2) A gas corporation, as defined in Section 222 of the Public
23 Utilities Code.

24 (3) A sewer system corporation, as defined in Section 230.6 of
25 the Public Utilities Code.

26 (4) A telephone corporation, as defined in Section 234 of the
27 Public Utilities Code.

28 (5) A water corporation, as defined in Section 241 of the Public
29 Utilities Code.

30 (6) A local publicly owned electric utility, as defined in Section
31 224.3 of the Public Utilities Code.

32 (7) A city, joint powers agency, or special district, if that local
33 entity uses the vehicle solely in the provision of sewer service, gas
34 service, water service, or wastewater service.

35 SEC. 232. Section 40002 of the Vehicle Code is amended to
36 read:

37 40002. (a) (1) If there is a violation of Section 40001, an
38 owner or any other person subject to Section 40001, who was not
39 driving the vehicle involved in the violation, may be mailed a
40 written notice to appear. An exact and legible duplicate copy of

1 that notice when filed with the court, in lieu of a verified complaint,
2 is a complaint to which the defendant may plead “guilty.”

3 (2) If, however, the defendant fails to appear in court or does
4 not deposit lawful bail, or pleads other than “guilty” of the offense
5 charged, a verified complaint shall be filed which shall be deemed
6 to be an original complaint, and thereafter proceedings shall be
7 had as provided by law, except that a defendant may, by an
8 agreement in writing, subscribed by the defendant and filed with
9 the court, waive the filing of a verified complaint and elect that
10 the prosecution may proceed upon a written notice to appear.

11 (3) A verified complaint pursuant to paragraph (2) shall include
12 a paragraph that informs the person that unless he or she appears
13 in the court designated in the complaint within 21 days after being
14 given the complaint and answers the charge, renewal of registration
15 of the vehicle involved in the offense may be precluded by the
16 department, or a warrant of arrest may be issued against him or
17 her.

18 (b) (1) If a person mailed a notice to appear pursuant to
19 paragraph (1) of subdivision (a) fails to appear in court or deposit
20 bail, a warrant of arrest shall not be issued based on the notice to
21 appear, even if that notice is verified. An arrest warrant may be
22 issued only after a verified complaint pursuant to paragraph (2) of
23 subdivision (a) is given the person and the person fails to appear
24 in court to answer that complaint.

25 (2) If a person mailed a notice to appear pursuant to paragraph
26 (1) of subdivision (a) fails to appear in court or deposit bail, the
27 court may give by mail to the person a notice of noncompliance.
28 A notice of noncompliance shall include a paragraph that informs
29 the person that unless he or she appears in the court designated in
30 the notice to appear within 21 days after being given by mail the
31 notice of noncompliance and answers the charge on the notice to
32 appear, or pays the applicable fine and penalties if an appearance
33 is not required, renewal of registration of the vehicle involved in
34 the offense may be precluded by the department.

35 (c) A verified complaint filed pursuant to this section shall
36 conform to Chapter 2 (commencing with Section 948) of Title 5
37 of Part 2 of the Penal Code.

38 (d) (1) The giving by mail of a notice to appear pursuant to
39 paragraph (1) of subdivision (a) or a notice of noncompliance

1 pursuant to paragraph (2) of subdivision (b) shall be done in a
2 manner prescribed by Section 22.

3 (2) The verified complaint pursuant to paragraph (2) of
4 subdivision (a) shall be given in a manner prescribed by Section
5 22.

6 SEC. 233. Section 42001.13 of the Vehicle Code is amended
7 to read:

8 42001.13. (a) A person who commits a violation of Section
9 22507.8 is subject to either a civil notice of parking violation
10 pursuant to Article 3 (commencing with Section 40200) of Chapter
11 1 of Division 17 or a criminal notice to appear.

12 (b) If a notice to appear is issued and upon conviction of an
13 infraction for a violation of Section 22507.8, a person shall be
14 punished as follows:

15 (1) A fine of not less than two hundred fifty dollars (\$250) and
16 not more than five hundred dollars (\$500) for the first offense.

17 (2) A fine of not less than five hundred dollars (\$500) and not
18 more than seven hundred fifty dollars (\$750) for the second offense.

19 (3) A fine of not less than seven hundred fifty dollars (\$750)
20 and not more than one thousand dollars (\$1,000) for three or more
21 offenses.

22 (c) The court may suspend the imposition of the fine if the
23 person convicted possessed at the time of the offense, but failed
24 to display, a valid special identification license plate issued
25 pursuant to Section 5007 or a distinguishing placard issued
26 pursuant to Section 22511.55 or 22511.59.

27 (d) A fine imposed under this section may be paid in installments
28 if the court determines that the defendant is unable to pay the entire
29 amount in one payment.

30 SEC. 234. Section 10608.24 of the Water Code is amended to
31 read:

32 10608.24. (a) Each urban retail water supplier shall meet its
33 interim urban water use target by December 31, 2015.

34 (b) Each urban retail water supplier shall meet its urban water
35 use target by December 31, 2020.

36 (c) An urban retail water supplier's compliance daily per capita
37 water use shall be the measure of progress toward achievement of
38 its urban water use target.

(d) (1) When determining compliance daily per capita water use, an urban retail water supplier may consider the following factors:

(A) Differences in evapotranspiration and rainfall in the baseline period compared to the compliance reporting period.

(B) Substantial changes to commercial or industrial water use resulting from increased business output and economic development that have occurred during the reporting period.

(C) Substantial changes to institutional water use resulting from fire suppression services or other extraordinary events, or from new or expanded operations, that have occurred during the reporting period.

(2) If the urban retail water supplier elects to adjust its estimate of compliance daily per capita water use due to one or more of the factors described in paragraph (1), it shall provide the basis for, and data supporting, the adjustment in the report required by Section 10608.40.

(e) When developing the urban water use target pursuant to Section 10608.20, an urban retail water supplier that has a substantial percentage of industrial water use in its service area may exclude process water from the calculation of gross water use to avoid a disproportionate burden on another customer sector.

(f) (1) An urban retail water supplier that includes agricultural water use in an urban water management plan pursuant to Part 2.6 (commencing with Section 10610) may include the agricultural water use in determining gross water use. An urban retail water supplier that includes agricultural water use in determining gross water use and develops its urban water use target pursuant to paragraph (2) of subdivision (b) of Section 10608.20 shall use a water efficient standard for agricultural irrigation of 100 percent of reference evapotranspiration multiplied by the crop coefficient for irrigated acres.

(2) An urban retail water supplier, that is also an agricultural water supplier, is not subject to the requirements of Chapter 4 (commencing with Section 10608.48), if the agricultural water use is incorporated into its urban water use target pursuant to paragraph (1).

SEC. 235. Section 10608.44 of the Water Code is amended to read:

1 10608.44. Each state agency shall reduce water use at facilities
2 it operates to support urban retail water suppliers in meeting the
3 target identified in Section 10608.16.

4 SEC. 236. Section 10853 of the Water Code is amended to
5 read:

6 10853. An agricultural water supplier that provides water to
7 less than 25,000 irrigated acres, excluding recycled water, shall
8 not be required to implement the requirements of this part or Part
9 2.55 (commencing with Section 10608) unless sufficient funding
10 has specifically been provided to that water supplier for these
11 purposes.

12 SEC. 237. Section 10933 of the Water Code is amended to
13 read:

14 10933. (a) On or before January 1, 2012, the department shall
15 commence to identify the extent of monitoring of groundwater
16 elevations that is being undertaken within each basin and subbasin.

17 (b) The department shall prioritize groundwater basins and
18 subbasins for the purpose of implementing this section. In
19 prioritizing the basins and subbasins, the department shall, to the
20 extent data are available, consider all of the following:

21 (1) The population overlying the basin or subbasin.

22 (2) The rate of current and projected growth of the population
23 overlying the basin or subbasin.

24 (3) The number of public supply wells that draw from the basin
25 or subbasin.

26 (4) The total number of wells that draw from the basin or
27 subbasin.

28 (5) The irrigated acreage overlying the basin or subbasin.

29 (6) The degree to which persons overlying the basin or subbasin
30 rely on groundwater as their primary source of water.

31 (7) Any documented impacts on the groundwater within the
32 basin or subbasin, including overdraft, subsidence, saline intrusion,
33 and other water quality degradation.

34 (8) Any other information determined to be relevant by the
35 department.

36 (c) If the department determines that all or part of a basin or
37 subbasin is not being monitored pursuant to this part, the
38 department shall do all of the following:

39 (1) Attempt to contact all well owners within the area not being
40 monitored.

1 (2) Determine if there is an interest in establishing any of the
2 following:

3 (A) A groundwater management plan pursuant to Part 2.75
4 (commencing with Section 10750).

5 (B) An integrated regional water management plan pursuant to
6 Part 2.2 (commencing with Section 10530) that includes a
7 groundwater management component that complies with the
8 requirements of Section 10753.7.

9 (C) A voluntary groundwater monitoring association pursuant
10 to Section 10935.

11 (d) If the department determines that there is sufficient interest
12 in establishing a plan or association described in paragraph (2) of
13 subdivision (c), or if the county agrees to perform the groundwater
14 monitoring functions in accordance with this part, the department
15 shall work cooperatively with the interested parties to comply with
16 the requirements of this part within two years.

17 (e) If the department determines, with regard to a basin or
18 subbasin, that there is insufficient interest in establishing a plan
19 or association described in paragraph (2) of subdivision (c), and
20 if the county decides not to perform the groundwater monitoring
21 and reporting functions of this part, the department shall do all of
22 the following:

23 (1) Identify any existing monitoring wells that overlie the basin
24 or subbasin that are owned or operated by the department or any
25 other state or federal agency.

26 (2) Determine whether the monitoring wells identified pursuant
27 to paragraph (1) provide sufficient information to demonstrate
28 seasonal and long-term trends in groundwater elevations.

29 (3) If the department determines that the monitoring wells
30 identified pursuant to paragraph (1) provide sufficient information
31 to demonstrate seasonal and long-term trends in groundwater
32 elevations, the department shall not perform groundwater
33 monitoring functions pursuant to Section 10933.5.

34 (4) If the department determines that the monitoring wells
35 identified pursuant to paragraph (1) provide insufficient
36 information to demonstrate seasonal and long-term trends in
37 groundwater elevations, and the State Mining and Geology Board
38 concurs with that determination, the department shall perform
39 groundwater monitoring functions pursuant to Section 10933.5.

1 SEC. 238. Section 12645 of the Water Code is amended to
2 read:

3 12645. The Legislature finds and declares all of the following:

4 (a) In 1911, the Legislature adopted a flood control plan for the
5 Sacramento Valley, as proposed by the federal California Debris
6 Commission, and created the Reclamation Board to regulate levees
7 and other encroachments, and to review and approve flood control
8 plans for the Sacramento River and its tributaries. The state's
9 adoption of a valleywide flood management plan was intended to
10 create a unified plan of flood control and to reclaim lands from
11 overflow. Six years later, California gained congressional
12 authorization for the United States Army Corps of Engineers
13 (Corps) to collaborate with the state in building and maintaining
14 the Sacramento River Flood Control Project. The federal
15 government transferred completed portions of the Sacramento
16 River Flood Control Project to the state as portions were completed,
17 and the state, in turn, passed responsibility for operation and
18 maintenance to local districts organized to provide flood control
19 within their boundaries.

20 (b) The state and federal governments have built or rebuilt
21 levees, weirs, and bypasses to increase conveyance of flood waters
22 downstream. The Sacramento River Flood Control Project and the
23 federal-state flood control project in the San Joaquin Valley include
24 approximately 1,600 miles of levees and other facilities to reduce
25 central valley flood risk, now defined as the State Plan of Flood
26 Control in subdivision (j) of Section 5096.805 of the Public
27 Resources Code. The Corps often constructed federal "project
28 levees" in both the Sacramento and San Joaquin River watersheds
29 by modifying existing levees. The federal government transferred
30 completed portions of the Sacramento River Flood Control Project
31 to the state, as portions were completed, which in turn passed
32 responsibility for operation and maintenance to local reclamation
33 districts.

34 (c) In 2003, a state Court of Appeal in *Paterno v. State of*
35 *California* (2003) 113 Cal.App.4th 998 (*Paterno*), held the state
36 liable, in a claim for inverse condemnation, for failure of a levee
37 that was operated and maintained by a local levee maintenance
38 district. In settlement of that litigation, the state's liability was
39 substantial because homes and a shopping center were built behind
40 the levee and suffered from the resulting flood.

(d) The Legislature has authorized funding for numerous flood control projects throughout the Sacramento and San Joaquin River watersheds. These statutory authorizations included varying provisions regarding responsibility and liability for operation and maintenance of the flood control facilities, and may or may not have incorporated the specified facilities into the federal-state Sacramento River or San Joaquin River flood control projects. After the court ruling in *Paterno*, the status of each flood facility became critically important to determining liability, and legal ambiguities led to questions about whether particular facilities were incorporated into a federal-state flood control project. In some cases, despite a location between two project levees, certain levees remain outside the jurisdiction of a federal-state flood control project, with local agencies retaining liability.

(e) In 2006, California voters approved the Disaster Preparedness and Flood Prevention Bond Act of 2006, which authorized the issuance of general obligation bonds in the amount of \$4.9 billion for flood protection and defined the Sacramento River and San Joaquin River federal-state flood control projects as the “State Plan of Flood Control.” The following year, the Legislature passed a package of bills to reform state flood protection policy in the central valley. These laws required the Department of Water Resources to develop, and the Central Valley Flood Protection Board to adopt, a Central Valley Flood Protection Plan, which is broader than the State Plan of Flood Control, affecting the entire watersheds of the Sacramento and San Joaquin Valley. These laws included provisions intended to limit state liability to facilities identified in the State Plan of Flood Control. These laws did not specifically address the facilities described in this article.

SEC. 239. Section 12647 of the Water Code is amended to read:

12647. (a) The state shall not have responsibility or liability for the construction, operation, and maintenance of central valley flood control facilities identified in this article unless all of the following apply:

(1) The department identifies the facility as part of the State Plan of Flood Control.

(2) The state has expressly accepted the transfer of liability for the facility from the federal government.

1 (3) The board incorporates the facility into the State Plan of
2 Flood Control pursuant to Section 9611.

3 (b) Unless otherwise specifically provided, nothing in this article
4 shall be construed to expand the responsibility of the state for the
5 operation or maintenance of any flood management facility outside
6 the scope of the State Plan of Flood Control, except as specifically
7 determined by the board pursuant to Section 9611.

8 (c) Use of the phrase “adopted and authorized” in this article
9 does not, by itself, reflect incorporation of the specified facility
10 into the State Plan of Flood Control or assumption of liability by
11 the state, unless one of the conditions described in subdivision (a)
12 applies to the facility.

13 (d) Nothing in this section abrogates or modifies any duty,
14 responsibility, or liability of any federal, state, or local agency,
15 including, but not limited to, those duties, responsibilities, and
16 liabilities set forth in Sections 8370, 12642, and 12828.

17 SEC. 240. Section 30779 of the Water Code is amended to
18 read:

19 30779. The ballots shall contain the list of names and the
20 respective offices as published in the proclamation and shall be in
21 substantially the following form:

22 GENERAL (OR SPECIAL) WATER DISTRICT ELECTION, ____
23 COUNTY WATER DISTRICT
24 (Inserting date thereof).

25 Instructions to Voters: To vote, stamp or write a cross (+)
26 opposite the name of the candidate for whom you desire to vote.
27 All marks otherwise made are forbidden. All distinguishing marks
28 are forbidden and make the ballot void. If you wrongly mark, tear,
29 or deface this ballot, return it to the inspector of elections and
30 obtain another.

31 SEC. 241. Section 4691 of the Welfare and Institutions Code
32 is amended to read:

33 4691. (a) The Legislature reaffirms its intent that
34 community-based day programs be planned and provided as part
35 of a continuum of services to enable persons with developmental
36 disabilities to approximate the pattern of everyday living available
37 to people of the same age without disabilities. The Legislature
38 further intends that standards be developed to ensure high-quality
39 services, and that equitable ratesetting procedures based upon those
40 standards be established, maintained, and revised, as necessary.

1 The Legislature intends that ratesetting procedures be developed
2 for all community-based day programs, which include adult
3 development centers, activity centers, infant day programs,
4 behavior management programs, social recreational programs, and
5 independent living programs.

6 (b) For the purpose of ensuring that regional centers may secure
7 high-quality services for persons with developmental disabilities,
8 the State Department of Developmental Services shall promulgate
9 regulations establishing program standards and an equitable process
10 for setting rates of state payment for community-based day
11 programs. These regulations shall include, but are not limited to,
12 all of the following:

13 (1) The standards and requirements related to the operation of
14 the program including, but not limited to, staff qualifications,
15 staff-to-client ratios, client entrance and exit criteria, program
16 design, program evaluation, program and client records and
17 documentation, client placement, and personnel requirements and
18 functions.

19 (2) The allowable cost components of the program including
20 salary and wages, staff benefits, operating expenses, and
21 management organization costs where two or more programs are
22 operated by a separate and distinct corporation or entity.

23 (3) The rate determination processes for establishing rates, based
24 on the allowable costs of the allowable cost components. Different
25 rate determination processes may be developed for establishing
26 rates for new and existing programs, and for the initial and
27 subsequent years of implementation of the regulations. The
28 processes shall include, but are not limited to, all of the following:

29 (A) The procedure for identification and grouping of programs
30 by type of day program and approved staff-to-client ratio.

31 (B) The requirements for an identification of the program, cost,
32 and other information, if any, which the program is required to
33 submit to the department or the regional center, the consequences,
34 if any, for failure to do so, and the timeframes and format for
35 submission and review.

36 (C) The ratesetting methodology.

37 (D) A procedure for adjusting rates as a result of anticipated
38 and unanticipated program changes and fiscal audits of the program
39 and a procedure for appealing rates, including the timeframes for

1 the program to request an adjustment or appeal, and for the
2 department to respond.

3 (E) A procedure for increasing established rates and the
4 allowable range of rates due to cost-of-living adjustments.

5 (F) A procedure for increasing established rates as a result of
6 Budget Act appropriations made pursuant to the ratesetting
7 methodology established pursuant to Section 4691.5 and
8 subdivision (c) of this section.

9 The department shall develop these regulations in consultation
10 with representatives from organizations representing the
11 developmental services system as determined by the department.
12 The State Council on Developmental Disabilities, and other
13 organizations representing regional centers, providers, and clients
14 shall have an opportunity to review and comment upon the
15 proposed regulations prior to their promulgation. The department
16 shall promulgate these regulations for all community-based day
17 programs by July 1, 1990.

18 (c) Upon the promulgation of regulations pursuant to subdivision
19 (b), and pursuant to Section 4691.5, and by September 1 of each
20 year thereafter, the department shall establish rates pursuant to the
21 regulations. Rate increases during the 1990–91 and 1991–92 fiscal
22 years shall be limited to those specified in subdivision (b). For the
23 1992–93 fiscal year and all succeeding fiscal years, any increases
24 proposed during those years in the rates of reimbursement
25 established pursuant to the regulations, except for rate increases
26 due to rate appeals and rate adjustments based on unanticipated
27 program changes, shall be subject to the appropriation of sufficient
28 funds in the Budget Act, for those purposes, to fully provide the
29 proposed increase to all eligible programs for the entire fiscal year.
30 If the funds appropriated in the Budget Act are not sufficient to
31 fully provide for the proposed increase in the rates of
32 reimbursement for all eligible programs for the entire fiscal year,
33 the proposed increase shall be limited to the level of funds
34 appropriated. The increases proposed in the rates of reimbursement
35 shall be reduced equitably among all eligible providers in
36 accordance with funds appropriated and the eligible programs shall
37 be reimbursed at the reduced amount for the entire fiscal year.

38 (d) Using the reported costs of day programs reimbursed at a
39 permanent rate and the standards and ratesetting processes

promulgated pursuant to subdivision (b) as a basis, the department shall report to the Legislature as follows:

(1) By April 15, 1993, and every odd year thereafter, the difference between permanent rates for existing programs and the rates of those programs based upon their allowable costs and client attendance, submitted pursuant to the regulations specified in subdivision (b). In reporting the difference, the department shall also identify the amount of the difference associated with programs whose rates are above the allowable range of rates, which is available for increasing the rates of programs whose rates are below the allowable range, to within the allowable range, and any other pertinent cost or rate information which the department deems necessary.

(2) By April 15, 1994, and every even year thereafter, the level of funding, if any, which was not appropriated to reimburse providers at the proposed rates reported the prior fiscal year pursuant to paragraph (1), and any other pertinent cost or rate information which the department deems necessary.

(3) The April 15, 1996, report pursuant to paragraph (2) shall be prepared jointly by the department and organizations representing community-based day program providers, as determined by the department. That report shall also include a review of the ratesetting process and recommendations, if any, for its modification.

(e) Rates established by the department pursuant to subdivision (b) are exempt from the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(f) The department shall ensure that the regional centers monitor compliance with program standards.

SEC. 242. Section 4860 of the Welfare and Institutions Code is amended to read:

4860. (a) (1) The hourly rate for supported employment services provided to consumers receiving individualized services shall be thirty dollars and eighty-two cents (\$30.82).

(2) Job coach hours spent in travel to consumer worksites may be reimbursable for individualized services only when the job coach travels from the vendor's headquarters to the consumer's worksite or from one consumer's worksite to another, and only when the travel is one way.

(b) The hourly rate for group services shall be thirty dollars and eighty-two cents (\$30.82), regardless of the number of consumers served in the group. Consumers in a group shall be scheduled to start and end work at the same time, unless an exception that takes into consideration the consumer's compensated work schedule is approved in advance by the regional center. The department, in consultation with stakeholders, shall adopt regulations to define the appropriate grounds for granting these exceptions. When the number of consumers in a supported employment placement group drops to fewer than the minimum required in subdivision (r) of Section 4851, the regional center may terminate funding for the group services in that group, unless, within 90 days, the program provider adds one or more regional centers, or Department of Rehabilitation-funded supported employment consumers to the group.

(c) Job coaching hours for group services shall be allocated on a prorated basis between a regional center and the Department of Rehabilitation when regional center and Department of Rehabilitation consumers are served in the same group.

(d) When Section 4855 applies, fees shall be authorized for the following:

(1) A three-hundred-sixty-dollar (\$360) fee shall be paid to the program provider upon intake of a consumer into a supported employment program. No fee shall be paid if that consumer completed a supported employment intake process with that same supported employment program within the previous 12 months.

(2) A seven-hundred-twenty-dollar (\$720) fee shall be paid upon placement of a consumer in an integrated job, except that no fee shall be paid if that consumer is placed with another consumer or consumers assigned to the same job coach during the same hours of employment.

(3) A seven-hundred-twenty-dollar (\$720) fee shall be paid after a 90-day retention of a consumer in a job, except that no fee shall be paid if that consumer has been placed with another consumer or consumers, assigned to the same job coach during the same hours of employment.

(e) Notwithstanding paragraph (4) of subdivision (a) of Section 4648, the regional center shall pay the supported employment program rates established by this section.

1 SEC. 243. Section 5806 of the Welfare and Institutions Code
2 is amended to read:

3 5806. The State Department of Mental Health shall establish
4 service standards that ensure that members of the target population
5 are identified, and services provided to assist them to live
6 independently, work, and reach their potential as productive
7 citizens. The department shall provide annual oversight of grants
8 issued pursuant to this part for compliance with these standards.
9 These standards shall include, but are not limited to, all of the
10 following:

11 (a) A service planning and delivery process that is target
12 population based and includes the following:

13 (1) Determination of the numbers of clients to be served and
14 the programs and services that will be provided to meet their needs.
15 The local director of mental health shall consult with the sheriff,
16 the police chief, the probation officer, the mental health board,
17 contract agencies, and family, client, ethnic, and citizen
18 constituency groups as determined by the director.

19 (2) Plans for services, including outreach to families whose
20 severely mentally ill adult is living with them, design of mental
21 health services, coordination and access to medications, psychiatric
22 and psychological services, substance abuse services, supportive
23 housing or other housing assistance, vocational rehabilitation, and
24 veterans' services. Plans also shall contain evaluation strategies,
25 that shall consider cultural, linguistic, gender, age, and special
26 needs of minorities in the target populations. Provision shall be
27 made for staff with the cultural background and linguistic skills
28 necessary to remove barriers to mental health services due to
29 limited-English-speaking ability and cultural differences.
30 Recipients of outreach services may include families, the public,
31 primary care physicians, and others who are likely to come into
32 contact with individuals who may be suffering from an untreated
33 severe mental illness who would be likely to become homeless if
34 the illness continued to be untreated for a substantial period of
35 time. Outreach to adults may include adults voluntarily or
36 involuntarily hospitalized as a result of a severe mental illness.

37 (3) Provision for services to meet the needs of target population
38 clients who are physically disabled.

39 (4) Provision for services to meet the special needs of older
40 adults.

1 (5) Provision for family support and consultation services,
2 parenting support and consultation services, and peer support or
3 self-help group support, where appropriate for the individual.

4 (6) Provision for services to be client-directed and that employ
5 psychosocial rehabilitation and recovery principles.

6 (7) Provision for psychiatric and psychological services that are
7 integrated with other services and for psychiatric and psychological
8 collaboration in overall service planning.

9 (8) Provision for services specifically directed to seriously
10 mentally ill young adults 25 years of age or younger who are
11 homeless or at significant risk of becoming homeless. These
12 provisions may include continuation of services that still would
13 be received through other funds had eligibility not been terminated
14 due to age.

15 (9) Services reflecting special needs of women from diverse
16 cultural backgrounds, including supportive housing that accepts
17 children, personal services coordinator therapeutic treatment, and
18 substance treatment programs that address gender-specific trauma
19 and abuse in the lives of persons with mental illness, and vocational
20 rehabilitation programs that offer job training programs free of
21 gender bias and sensitive to the needs of women.

22 (10) Provision for housing for clients that is immediate,
23 transitional, permanent, or all of these.

24 (11) Provision for clients who have been suffering from an
25 untreated severe mental illness for less than one year, and who do
26 not require the full range of services but are at risk of becoming
27 homeless unless a comprehensive individual and family support
28 services plan is implemented. These clients shall be served in a
29 manner that is designed to meet their needs.

30 (12) Provision for services for veterans.

31 (b) A client shall have a clearly designated mental health
32 personal services coordinator who may be part of a
33 multidisciplinary treatment team who is responsible for providing
34 or assuring needed services. Responsibilities include complete
35 assessment of the client's needs, development of the client's
36 personal services plan, linkage with all appropriate community
37 services, monitoring of the quality and followthrough of services,
38 and necessary advocacy to ensure that the client receives those
39 services that are agreed to in the personal services plan. A client
40 shall participate in the development of his or her personal services

1 plan, and responsible staff shall consult with the designated
2 conservator, if one has been appointed, and, with the consent of
3 the client, consult with the family and other significant persons as
4 appropriate.

5 (c) The individual personal services plan shall ensure that
6 members of the target population involved in the system of care
7 receive age-appropriate, gender-appropriate, and culturally
8 appropriate services or appropriate services based on any
9 characteristic listed or defined in Section 11135 of the Government
10 Code, to the extent feasible, that are designed to enable recipients
11 to:

12 (1) Live in the most independent, least restrictive housing
13 feasible in the local community, and for clients with children, to
14 live in a supportive housing environment that strives for
15 reunification with their children or assists clients in maintaining
16 custody of their children as is appropriate.

17 (2) Engage in the highest level of work or productive activity
18 appropriate to their abilities and experience.

19 (3) Create and maintain a support system consisting of friends,
20 family, and participation in community activities.

21 (4) Access an appropriate level of academic education or
22 vocational training.

23 (5) Obtain an adequate income.

24 (6) Self-manage their illness and exert as much control as
25 possible over both the day-to-day and long-term decisions that
26 affect their lives.

27 (7) Access necessary physical health care and maintain the best
28 possible physical health.

29 (8) Reduce or eliminate serious antisocial or criminal behavior
30 and thereby reduce or eliminate their contact with the criminal
31 justice system.

32 (9) Reduce or eliminate the distress caused by the symptoms of
33 mental illness.

34 (10) Have freedom from dangerous addictive substances.

35 (d) The individual personal services plan shall describe the
36 service array that meets the requirements of subdivision (c), and
37 to the extent applicable to the individual, the requirements of
38 subdivision (a).

39 SEC. 244. Section 14083 of the Welfare and Institutions Code
40 is amended to read:

1 14083. The factors to be considered by the negotiator in
2 negotiating contracts under this article, or in drawing specifications
3 for competitive bidding, include, but are not limited to, all of the
4 following:

- 5 (a) Beneficiary access.
- 6 (b) Utilization controls.
- 7 (c) Ability to render quality services efficiently and
8 economically.
- 9 (d) Demonstrated ability to provide or arrange needed
10 specialized services.
- 11 (e) Protection against fraud and abuse.
- 12 (f) Any other factor which would reduce costs, promote access,
13 or enhance the quality of care.
- 14 (g) The capacity to provide a given tertiary service, such as
15 specialized children's services, on a regional basis.
- 16 (h) Recognition of the variations in severity of illness and
17 complexity of care.
- 18 (i) Existing labor-management collective bargaining agreements.
- 19 (j) The situation of county hospitals and university medical
20 centers contracting with counties for provision of health care to
21 indigent persons entitled to care under Section 17000, which are
22 burdened to a greater extent than private hospitals with bad debts,
23 indirect costs, medical education programs, and capital needs.
- 24 (k) The special circumstances of hospitals serving a
25 disproportionate number of Medi-Cal beneficiaries and patients
26 who are not covered by other third-party payers, including the
27 costs associated with assuring an adequate supply of registered
28 nurses.
- 29 (l) The costs of providing complex emergency services,
30 including the costs of meeting and maintaining state and local
31 requirements for trauma center designation.
- 32 (m) The hospital does any of the following:
 - 33 (1) Provides additional obstetrical beds.
 - 34 (2) Contracts with one or more comprehensive perinatal
35 providers.
 - 36 (3) Permits certified nurse midwives, subject to hospital rules,
37 and consistent with existing laws and regulations, to admit patients
38 to the health facility.
 - 39 (4) Expands overall obstetrical services in the hospital.

1 (n) The special circumstances of hospitals whose Medi-Cal
2 inpatient utilization rate exceeds the mean Medicaid inpatient
3 utilization rate by at least one-half of one standard deviation.

4 (o) The ability and capacity of the contracting hospital in a
5 closed health facility planning area to provide health care services
6 to beneficiaries who are in life-threatening or emergency situations,
7 but have been sufficiently stabilized at another noncontracting
8 facility in order to facilitate transportation to the contracting
9 hospital.

10 (p) The ability of the contracting hospital to provide a secure
11 environment for the provision of health care services. In this regard,
12 the negotiator shall consider additional security measures that the
13 contracting hospital may have taken to provide a secure
14 environment, including, but not limited to, the use of detection
15 equipment or procedures to detect lethal weapons, the appropriate
16 use of surveillance cameras, limiting access of unauthorized
17 personnel to the emergency department, installation of bullet proof
18 glass as appropriate in designated areas, the use of emergency
19 “panic” buttons to alert local law enforcement agencies, and
20 assigning full-time security personnel to the emergency department.

21 SEC. 245. Section 14085.57 of the Welfare and Institutions
22 Code is amended to read:

23 14085.57. (a) A designated public hospital, as defined in
24 subdivision (d) of Section 14166.1, that is contracting to provide
25 services under this article, and that has or would have fulfilled the
26 criteria set forth in Section 14105.98 or subparagraph (B) of
27 paragraph (1) of subdivision (c) of Section 14166.3 for the three
28 most recent years prior to submitting final plans for an eligible
29 project in accordance with paragraph (3) of subdivision (b), may
30 receive supplemental reimbursement to the extent provided for in
31 Section 14085.5, subject to subdivision (c), in addition to the rate
32 of payment provided for in the contract entered into under this
33 article.

34 (b) (1) A hospital qualifying pursuant to subdivision (a) that
35 elects to receive reimbursement under this section shall submit
36 documentation to the department regarding debt service on general
37 obligation bonds or revenue bonds used for financing the
38 construction, renovation, or replacement of hospital facilities,
39 including buildings and fixed equipment.

1 (2) A hospital qualifying pursuant to subdivision (a) shall remain
2 open for the life of the supplemental reimbursements provided for
3 pursuant to this section.

4 (3) (A) Eligible projects shall include those new capital projects
5 funded by new debt for which final plans have been submitted to
6 the Office of Statewide Health Planning and Development after
7 January 1, 2007, and prior to December 31, 2011.

8 (B) Eligible projects that may receive supplemental
9 reimbursement pursuant to subdivision (a) are limited to projects
10 related to meeting seismic safety deadlines.

11 (c) No expenditure of state funds, either from the General Fund
12 or any special fund, shall be made for the nonfederal share of the
13 supplemental reimbursement provided for in this section. The
14 department shall, for designated public hospitals that meet the
15 criteria in subdivision (a), claim federal expenditures through the
16 use of certified public expenditures or intergovernmental transfers,
17 as necessary and appropriate.

18 (d) The department shall promptly seek any necessary, and all
19 available, federal approvals for the implementation of this section.
20 This section shall be implemented only to the extent that federal
21 approval and federal financial participation are available.

22 SEC. 246. Section 14105.3 of the Welfare and Institutions
23 Code is amended to read:

24 14105.3. (a) The department is considered to be the purchaser,
25 but not the dispenser or distributor, of prescribed drugs under the
26 Medi-Cal program for the purpose of enabling the department to
27 obtain from manufacturers of prescribed drugs the most favorable
28 price for those drugs furnished by one or more manufacturers,
29 based upon the large quantity of the drugs purchased under the
30 Medi-Cal program, and to enable the department, notwithstanding
31 any other provision of state law, to obtain from the manufacturers
32 discounts, rebates, or refunds based on the quantities purchased
33 under the program, insofar as may be permissible under federal
34 law. Nothing in this section shall interfere with usual and
35 customary distribution practices in the drug industry.

36 (b) The department may enter into exclusive or nonexclusive
37 contracts on a bid or negotiated basis with manufacturers,
38 distributors, dispensers, or suppliers of appliances, durable medical
39 equipment, medical supplies, and other product-type health care
40 services and with laboratories for clinical laboratory services for

1 the purpose of obtaining the most favorable prices to the state and
2 to assure adequate quality of the product or service. Except as
3 provided in subdivision (f), this subdivision shall not apply to
4 prescribed drugs dispensed by pharmacies licensed pursuant to
5 Article 7 (commencing with Section 4110) of Chapter 9 of Division
6 2 of the Business and Professions Code.

7 (c) Notwithstanding subdivision (b), the department may not
8 enter into a contract with a clinical laboratory unless the clinical
9 laboratory operates in conformity with Chapter 3 (commencing
10 with Section 1200) of Division 2 of the Business and Professions
11 Code and the regulations adopted thereunder, and Section 263a of
12 Title 42 of the United States Code and the regulations adopted
13 thereunder.

14 (d) The department shall contract with manufacturers of
15 single-source drugs on a negotiated basis, and with manufacturers
16 of multisource drugs on a bid or negotiated basis.

17 (e) In order to ensure and improve access by Medi-Cal
18 beneficiaries to both hearing aid appliances and provider services,
19 and to ensure that the state obtains the most favorable prices, the
20 department, by June 30, 2008, shall enter into exclusive or
21 nonexclusive contracts, on a bid or negotiated basis, for purchasing
22 hearing aid appliances.

23 (f) In order to provide specialized care in the distribution of
24 specialized drugs, as identified by the department and that include,
25 but are not limited to, blood factors and immunizations, the
26 department may enter into contracts with providers licensed to
27 dispense dangerous drugs or devices pursuant to Chapter 9
28 (commencing with Section 4000) of Division 2 of the Business
29 and Professions Code, for programs that qualify for federal funding
30 pursuant to the medicaid state plan, or waivers and the programs
31 authorized by Article 5 (commencing with Section 123800) of
32 Chapter 3 of Part 2 of, and Article 1 (commencing with Section
33 125125) of Chapter 2 of Part 5 of, Division 106 of the Health and
34 Safety Code, in accordance with this subdivision.

35 (1) The department shall, for purposes of ensuring proper patient
36 care, consult current standards of practice when executing a
37 provider contract.

38 (2) The department shall, for purposes of ensuring quality of
39 care to people with unique conditions requiring specialty drugs,
40 contract with a nonexclusive number of providers that meets the

1 needs of the affected population, covers all geographic regions in
2 California, and reflects the distribution of the specialty drug in the
3 community. The department may use a single provider in the event
4 the product manufacturer designates a sole-source delivery
5 mechanism. The department shall consult with interested parties
6 and appropriate stakeholders in implementing this section with
7 respect to all of the following:

8 (A) Notifying stakeholder representatives of the potential
9 inclusion or exclusion of drugs in the specialty pharmacy program.

10 (B) Allowing for written input regarding the potential inclusion
11 or exclusion of drugs into the specialty pharmacy program.

12 (C) Scheduling at least one public meeting regarding the
13 potential inclusion or exclusion of drugs into the specialty
14 pharmacy program.

15 (D) Obtaining a recommendation from the Medi-Cal Drug
16 Utilization Review Advisory Committee, established pursuant to
17 Section 1927 of the federal Social Security Act (42 U.S.C. Sec.
18 1396r-8), on the inclusion or exclusion of drugs into the specialty
19 pharmacy program distribution based on clinical best practices
20 related to each drug considered.

21 (3) For purposes of this subdivision, the definition of “blood
22 factors” has the same meaning as that term is defined in Section
23 14105.86.

24 (4) The department shall make every reasonable effort to ensure
25 all medically necessary clotting factor therapies are available for
26 the treatment of people with bleeding disorders.

27 (5) The department shall generate an annual report, published
28 publicly six months after the end of the first and second years after
29 implementation, which shall include, but not be limited to, all of
30 the following information:

31 (A) The number and geographic distribution of participating
32 providers.

33 (B) The number and geographic distribution of beneficiaries
34 receiving specialty drugs, including on a per-provider basis.

35 (C) A summary of problems and complaints received regarding
36 the specialty pharmacy program.

37 (D) An evaluation of hospital and emergency services before
38 and after implementation for the targeted patient population.

39 (E) Results of patient satisfaction surveys.

40 (F) The cost-effectiveness of the program.

1 (6) This subdivision shall become inoperative three years after
2 the date of implementation, as provided pursuant to a notice to the
3 public issued by the department, or until July 1, 2013, whichever
4 is earlier.

5 (g) The department may contract with an intermediary to
6 establish provider contracts pursuant to this section for programs
7 that qualify for federal funding pursuant to the Medicaid state plan
8 or waivers and the programs authorized by Article 5 (commencing
9 with Section 123800) of Chapter 3 of Part 2 of, and Article 1
10 (commencing with Section 125125) of Chapter 2 of Part 5 of,
11 Division 106 of the Health and Safety Code.

12 (h) In carrying out contracting activity for this or any section
13 associated with the Medi-Cal list of contract drugs, notwithstanding
14 Section 19130 of the Government Code, the department may
15 contract, either directly or through the fiscal intermediary, for
16 pharmacy consultant staff necessary to accomplish the contracting
17 process or treatment authorization request reviews. The fiscal
18 intermediary contract, including any contract amendment, system
19 change pursuant to a change order, and project or systems
20 development notice shall be exempt from Part 2 (commencing
21 with Section 10100) of Division 2 of the Public Contract Code
22 and any policies, procedures, or regulations authorized by these
23 provisions.

24 (i) In order to achieve maximum cost savings the Legislature
25 hereby determines that an expedited contract process for contracts
26 under this section is necessary. Therefore, contracts under this
27 section shall be exempt from Chapter 2 (commencing with Section
28 10290) of Part 2 of Division 2 of the Public Contract Code.

29 (j) For purposes of implementing the contracting provisions
30 specified in this section, the department shall do all of the
31 following:

32 (1) Ensure adequate access for Medi-Cal patients to quality
33 laboratory testing services in the geographic regions of the state
34 where contracting occurs.

35 (2) Consult with the statewide association of clinical laboratories
36 and other appropriate stakeholders on the implementation of the
37 contracting provisions specified in this section to ensure maximum
38 access for Medi-Cal patients consistent with the savings targets
39 projected by the 2002–03 budget conference committee for clinical
40 laboratory services provided under the Medi-Cal program.

(3) Consider which types of laboratories are appropriate for implementing the contracting provisions specified in this section, including independent laboratories, outreach laboratory programs of hospital-based laboratories, clinic laboratories, physician office laboratories, and group practice laboratories.

SEC. 247. Section 14132.725 of the Welfare and Institutions Code is amended to read:

14132.725. (a) Commencing July 1, 2006, to the extent that federal financial participation is available, face-to-face contact between a health care provider and a patient shall not be required under the Medi-Cal program for teleophthalmology and teledermatology by store and forward. Services appropriately provided through the store and forward process are subject to billing and reimbursement policies developed by the department.

(b) For purposes of this section, “teleophthalmology and teledermatology by store and forward” means an asynchronous transmission of medical information to be reviewed at a later time by a physician at a distant site who is trained in ophthalmology or dermatology or, for teleophthalmology, by an optometrist who is licensed pursuant to Chapter 7 (commencing with Section 3000) of Division 2 of the Business and Professions Code, where the physician or optometrist at the distant site reviews the medical information without the patient being present in real time. A patient receiving teleophthalmology or teledermatology by store and forward shall be notified of the right to receive interactive communication with the distant specialist physician or optometrist, and shall receive an interactive communication with the distant specialist physician or optometrist, upon request. If requested, communication with the distant specialist physician or optometrist may occur either at the time of the consultation, or within 30 days of the patient’s notification of the results of the consultation. If the reviewing optometrist identifies a disease or condition requiring consultation or referral pursuant to Section 3041 of the Business and Professions Code, that consultation or referral shall be with an ophthalmologist or other appropriate physician and surgeon, as required.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, and make specific this

1 section by means of all-county letters, provider bulletins, and
2 similar instructions.

3 (d) On or before January 1, 2008, the department shall report
4 to the Legislature the number and type of services provided, and
5 the payments made related to the application of store and forward
6 telemedicine as provided, under this section as a Medi-Cal benefit.

7 (e) The health care provider shall comply with the informed
8 consent provisions of subdivisions (c) to (g), inclusive, of, and
9 subdivisions (i) and (j) of, Section 2290.5 of the Business and
10 Professions Code when a patient receives teleophthalmology or
11 teledermatology by store and forward.

12 (f) This section shall remain in effect only until January 1, 2013,
13 and as of that date is repealed, unless a later enacted statute, that
14 is enacted before January 1, 2013, deletes or extends that date.

15 SEC. 248. Section 14154 of the Welfare and Institutions Code
16 is amended to read:

17 14154. (a) The department shall establish and maintain a plan
18 whereby costs for county administration of the determination of
19 eligibility for benefits under this chapter will be effectively
20 controlled within the amounts annually appropriated for that
21 administration. The plan, to be known as the County Administrative
22 Cost Control Plan, shall establish standards and performance
23 criteria, including workload, productivity, and support services
24 standards, to which counties shall adhere. The plan shall include
25 standards for controlling eligibility determination costs that are
26 incurred by performing eligibility determinations at county
27 hospitals, or that are incurred due to the outstationing of any other
28 eligibility function. Except as provided in Section 14154.15,
29 reimbursement to a county for outstationed eligibility functions
30 shall be based solely on productivity standards applied to that
31 county's welfare department office. The plan shall be part of a
32 single state plan, jointly developed by the department and the State
33 Department of Social Services, in conjunction with the counties,
34 for administrative cost control for the California Work Opportunity
35 and Responsibility to Kids (CalWORKs), Food Stamp, and Medical
36 Assistance (Medi-Cal) programs. Allocations shall be made to
37 each county and shall be limited by and determined based upon
38 the County Administrative Cost Control Plan. In administering
39 the plan to control county administrative costs, the department
40 shall not allocate state funds to cover county cost overruns that

1 result from county failure to meet requirements of the plan. The
2 department and the State Department of Social Services shall
3 budget, administer, and allocate state funds for county
4 administration in a uniform and consistent manner.

5 (b) Nothing in this section, Section 15204.5, or Section 18906
6 shall be construed so as to limit the administrative or budgetary
7 responsibilities of the department in a manner that would violate
8 Section 14100.1, and thereby jeopardize federal financial
9 participation under the Medi-Cal program.

10 (c) (1) The Legislature finds and declares that in order for
11 counties to do the work that is expected of them, it is necessary
12 that they receive adequate funding, including adjustments for
13 reasonable annual cost-of-doing-business increases. The Legislature
14 further finds and declares that linking appropriate funding for
15 county Medi-Cal administrative operations, including annual
16 cost-of-doing-business adjustments, with performance standards
17 will give counties the incentive to meet the performance standards
18 and enable them to continue to do the work they do on behalf of
19 the state. It is therefore the Legislature's intent to provide
20 appropriate funding to the counties for the effective administration
21 of the Medi-Cal program at the local level to ensure that counties
22 can reasonably meet the purposes of the performance measures as
23 contained in this section.

24 (2) It is the intent of the Legislature to not appropriate funds for
25 the cost-of-doing-business adjustment for the 2008–09 and
26 2009–10 fiscal years.

27 (d) The department is responsible for the Medi-Cal program in
28 accordance with state and federal law. A county shall determine
29 Medi-Cal eligibility in accordance with state and federal law. If
30 in the course of its duties the department becomes aware of
31 accuracy problems in any county, the department shall, within
32 available resources, provide training and technical assistance as
33 appropriate. Nothing in this section shall be interpreted to eliminate
34 any remedy otherwise available to the department to enforce
35 accurate county administration of the program. In administering
36 the Medi-Cal eligibility process, each county shall meet the
37 following performance standards each fiscal year:

38 (1) Complete eligibility determinations as follows:

39 (A) Ninety percent of the general applications without applicant
40 errors and are complete shall be completed within 45 days.

1 (B) Ninety percent of the applications for Medi-Cal based on
2 disability shall be completed within 90 days, excluding delays by
3 the state.

4 (2) (A) The department shall establish best practice guidelines
5 for expedited enrollment of newborns into the Medi-Cal program,
6 preferably with the goal of enrolling newborns within 10 days after
7 the county is informed of the birth. The department, in consultation
8 with counties and other stakeholders, shall work to develop a
9 process for expediting enrollment for all newborns, including those
10 born to mothers receiving CalWORKs assistance.

11 (B) Upon the development and implementation of the best
12 practice guidelines and expedited processes, the department and
13 the counties may develop an expedited enrollment timeframe for
14 newborns that is separate from the standards for all other
15 applications, to the extent that the timeframe is consistent with
16 these guidelines and processes.

17 (C) Notwithstanding the rulemaking procedures of Chapter 3.5
18 (commencing with Section 11340) of Part 1 of Division 3 of Title
19 2 of the Government Code, the department may implement this
20 section by means of all-county letters or similar instructions,
21 without further regulatory action.

22 (3) Perform timely annual redeterminations, as follows:

23 (A) Ninety percent of the annual redetermination forms shall
24 be mailed to the recipient by the anniversary date.

25 (B) Ninety percent of the annual redeterminations shall be
26 completed within 60 days of the recipient's annual redetermination
27 date for those redeterminations based on forms that are complete
28 and have been returned to the county by the recipient in a timely
29 manner.

30 (C) Ninety percent of those annual redeterminations where the
31 redetermination form has not been returned to the county by the
32 recipient shall be completed by sending a notice of action to the
33 recipient within 45 days after the date the form was due to the
34 county.

35 (D) When a child is determined by the county to change from
36 no share of cost to a share of cost and the child meets the eligibility
37 criteria for the Healthy Families Program established under Section
38 12693.98 of the Insurance Code, the child shall be placed in the
39 Medi-Cal-to-Healthy Families Bridge Benefits Program, and these
40 cases shall be processed as follows:

1 (i) Ninety percent of the families of these children shall be sent
2 a notice informing them of the Healthy Families Program within
3 five working days from the determination of a share of cost.

4 (ii) Ninety percent of all annual redetermination forms for these
5 children shall be sent to the Healthy Families Program within five
6 working days from the determination of a share of cost if the parent
7 has given consent to send this information to the Healthy Families
8 Program.

9 (iii) Ninety percent of the families of these children placed in
10 the Medi-Cal-to-Healthy Families Bridge Benefits Program who
11 have not consented to sending the child's annual redetermination
12 form to the Healthy Families Program shall be sent a request,
13 within five working days of the determination of a share of cost,
14 to consent to send the information to the Healthy Families Program.

15 (E) Subparagraph (D) shall not be implemented until 60 days
16 after the Medi-Cal and Joint Medi-Cal and Healthy Families
17 applications and the Medi-Cal redetermination forms are revised
18 to allow the parent of a child to consent to forward the child's
19 information to the Healthy Families Program.

20 (e) The department shall develop procedures in collaboration
21 with the counties and stakeholder groups for determining county
22 review cycles, sampling methodology and procedures, and data
23 reporting.

24 (f) On January 1 of each year, each applicable county, as
25 determined by the department, shall report to the department on
26 the county's results in meeting the performance standards specified
27 in this section. The report shall be subject to verification by the
28 department. County reports shall be provided to the public upon
29 written request.

30 (g) If the department finds that a county is not in compliance
31 with one or more of the standards set forth in this section, the
32 county shall, within 60 days, submit a corrective action plan to the
33 department for approval. The corrective action plan shall, at a
34 minimum, include steps that the county shall take to improve its
35 performance on the standard of standards with which the county
36 is out of compliance. The plan shall establish interim benchmarks
37 for improvement that shall be expected to be met by the county in
38 order to avoid a sanction.

39 (h) (1) If a county does not meet the performance standards for
40 completing eligibility determinations and redeterminations as

1 specified in this section, the department may, at its sole discretion,
2 reduce the allocation of funds to that county in the following year
3 by 2 percent. Any funds so reduced may be restored by the
4 department if, in the determination of the department, sufficient
5 improvement has been made by the county in meeting the
6 performance standards during the year for which the funds were
7 reduced. If the county continues not to meet the performance
8 standards, the department may reduce the allocation by an
9 additional 2 percent for each year thereafter in which sufficient
10 improvement has not been made to meet the performance standards.

11 (2) No reduction of the allocation of funds to a county shall be
12 imposed pursuant to this subdivision for failure to meet
13 performance standards during any period of time in which the
14 cost-of-doing-business increase is suspended.

15 (i) The department shall develop procedures, in collaboration
16 with the counties and stakeholders, for developing instructions for
17 the performance standards established under subparagraph (D) of
18 paragraph (3) of subdivision (d), no later than September 1, 2005.

19 (j) No later than September 1, 2005, the department shall issue
20 a revised annual redetermination form to allow a parent to indicate
21 parental consent to forward the annual redetermination form to
22 the Healthy Families Program if the child is determined to have a
23 share of cost.

24 (k) The department, in coordination with the Managed Risk
25 Medical Insurance Board, shall streamline the method of providing
26 the Healthy Families Program with information necessary to
27 determine Healthy Families eligibility for a child who is receiving
28 services under the Medi-Cal-to-Healthy Families Bridge Benefits
29 Program.

30 SEC. 249. Section 14163 of the Welfare and Institutions Code
31 is amended to read:

32 14163. (a) For purposes of this section, the following
33 definitions shall apply:

34 (1) "Public entity" means a county, a city, a city and county,
35 the State of California, the University of California, a local health
36 care district, a local health authority, or any other political
37 subdivision of the state.

38 (2) "Hospital" means a health facility that is licensed pursuant
39 to Chapter 2 (commencing with Section 1250) of Division 2 of

1 the Health and Safety Code to provide acute inpatient hospital
2 services, and includes all components of the facility.

3 (3) “Disproportionate share hospital” means a hospital providing
4 acute inpatient services to Medi-Cal beneficiaries that meets the
5 criteria for disproportionate share status relating to acute inpatient
6 services set forth in Section 14105.98.

7 (4) “Disproportionate share list” means the annual list of
8 disproportionate share hospitals for acute inpatient services issued
9 by the department pursuant to Section 14105.98.

10 (5) “Fund” means the Medi-Cal Inpatient Payment Adjustment
11 Fund.

12 (6) “Eligible hospital” means, for a particular state fiscal year,
13 a hospital on the disproportionate share list that is eligible to
14 receive payment adjustment amounts under Section 14105.98 with
15 respect to that state fiscal year.

16 (7) “Transfer year” means the particular state fiscal year during
17 which, or with respect to which, public entities are required by
18 this section to make an intergovernmental transfer of funds to the
19 Controller.

20 (8) “Transferor entity” means a public entity that, with respect
21 to a particular transfer year, is required by this section to make an
22 intergovernmental transfer of funds to the Controller.

23 (9) “Transfer amount” means an amount of intergovernmental
24 transfer of funds that this section requires for a particular transferor
25 entity with respect to a particular transfer year.

26 (10) “Intergovernmental transfer” means a transfer of funds
27 from a public entity to the state that is local government financial
28 participation in Medi-Cal pursuant to the terms of this section.

29 (11) “Licensee” means an entity that has been issued a license
30 to operate a hospital by the department.

31 (12) “Annualized Medi-Cal inpatient paid days” means the total
32 number of Medi-Cal acute inpatient hospital days, regardless of
33 dates of service, for which payment was made by or on behalf of
34 the department to a hospital, under present or previous ownership,
35 during the most recent calendar year ending prior to the beginning
36 of a particular transfer year, including all Medi-Cal acute inpatient
37 covered days of care for hospitals that are paid on a different basis
38 than per diem payments.

39 (13) “Medi-Cal acute inpatient hospital day” means any acute
40 inpatient day of service attributable to patients who, for those days,

1 were eligible for medical assistance under the California state plan,
2 including any day of service that is reimbursed on a basis other
3 than per diem payments.

4 (14) “OBRA 1993 payment limitation” means the
5 hospital-specific limitation on the total annual amount of payment
6 adjustments to each eligible hospital under the payment adjustment
7 program that can be made with federal financial participation under
8 Section 1396r-4(g) of Title 42 of the United States Code as
9 implemented pursuant to the Medi-Cal State Plan.

10 (b) The Medi-Cal Inpatient Payment Adjustment Fund is hereby
11 created in the State Treasury. Notwithstanding Section 13340 of
12 the Government Code, the fund shall be continuously appropriated
13 to, and under the administrative control of, the department for the
14 purposes specified in subdivision (d). The fund shall consist of the
15 following:

16 (1) Transfer amounts collected by the Controller under this
17 section, whether submitted by transferor entities pursuant to
18 applicable provisions of this section or obtained by offset pursuant
19 to subdivision (j).

20 (2) Any other intergovernmental transfers deposited in the fund,
21 as permitted by Section 14164.

22 (3) Any interest that accrues with respect to amounts in the fund.

23 (c) Moneys in the fund, which shall not consist of any state
24 general funds, shall be used as the source for the nonfederal share
25 of payments to hospitals pursuant to Section 14105.98. Moneys
26 shall be allocated from the fund by the department and matched
27 by federal funds in accordance with customary Medi-Cal
28 accounting procedures, and used to make payments pursuant to
29 Section 14105.98.

30 (d) Except as otherwise provided in Section 14105.98 or in any
31 law appropriating a specified sum of money to the department for
32 administering this section and Section 14105.98, moneys in the
33 fund shall be used only for the following:

34 (1) Payments to hospitals pursuant to Section 14105.98.

35 (2) Transfers to the Health Care Deposit Fund as follows:

36 (A) In the amount of two hundred thirty-nine million seven
37 hundred fifty-seven thousand six hundred ninety dollars
38 (\$239,757,690) for the 1994–95 and 1995–96 fiscal years.

1 (B) In the amount of two hundred twenty-nine million seven
2 hundred fifty-seven thousand six hundred ninety dollars
3 (\$229,757,690) for the 1996–97 fiscal year.

4 (C) In the amount of one hundred fifty-four million seven
5 hundred fifty-seven thousand six hundred ninety dollars
6 (\$154,757,690) for the 1997–98 fiscal year.

7 (D) In the amount of one hundred fourteen million seven
8 hundred fifty-seven thousand six hundred ninety dollars
9 (\$114,757,690) for the 1998–99 fiscal year.

10 (E) (i) In the amount of eighty-four million seven hundred
11 fifty-seven thousand six hundred ninety dollars (\$84,757,690) for
12 the 1999–2000 fiscal year.

13 (ii) It is the intent of the Legislature that the economic benefit
14 of any reduction in the amount transferred, or to be transferred, to
15 the Health Care Deposit Fund pursuant to this subdivision for the
16 1999–2000 fiscal year, as compared to the amount so transferred
17 for the 1998–99 fiscal year, be allocated equally between public
18 and nonpublic disproportionate share hospitals. To implement the
19 reduction in clause (i) the department shall, by June 30, 2000,
20 adjust the calculations in Section 14105.98 in order to allocate the
21 funds in accordance with this clause.

22 (F) In the amount of twenty-nine million seven hundred
23 fifty-seven thousand six hundred ninety dollars (\$29,757,690) for
24 the 2000–01 fiscal year and the 2001–02 fiscal year.

25 (G) In the amount of eighty-five million dollars (\$85,000,000)
26 for the 2002–03 fiscal year and each fiscal year thereafter.

27 (H) The transfers from the fund shall be made in six equal
28 monthly installments to the Medi-Cal local assistance appropriation
29 item (Item 4260-101-0001 of Section 2.00 of the annual Budget
30 Act) in support of Medi-Cal expenditures. The first installment
31 shall accrue in October of each transfer year, and all other
32 installments shall accrue monthly thereafter from November
33 through March.

34 (e) For the 1991–92 state fiscal year, the department shall
35 determine, no later than 70 days after the enactment of this section,
36 the transferor entities for the 1991–92 transfer year. To make this
37 determination, the department shall utilize the disproportionate
38 share list for the 1991–92 fiscal year issued by the department
39 pursuant to paragraph (1) of subdivision (f) of Section 14105.98.
40 The department shall identify each eligible hospital on the list for

1 which a public entity is the licensee as of July 1, 1991. The public
2 entity that is the licensee of each identified eligible hospital shall
3 be a transferor entity for the 1991–92 transfer year.

4 (f) The department shall determine, no later than 70 days after
5 the enactment of this section, the transfer amounts for the 1991–92
6 transfer year.

7 The transfer amounts shall be determined as follows:

8 (1) The eligible hospitals for 1991–92 shall be identified. For
9 each hospital, the applicable total per diem payment adjustment
10 amount under Section 14105.98 for the 1991–92 transfer year shall
11 be computed. This amount shall be multiplied by 80 percent of the
12 eligible hospital's annualized Medi-Cal inpatient paid days as
13 determined from all Medi-Cal paid claims records available through
14 April 1, 1991. The products of these calculations for all eligible
15 hospitals shall be added together to determine an aggregate sum
16 for the 1991–92 transfer year.

17 (2) The eligible hospitals for 1991–92 involving transferor
18 entities as licensees shall be identified. For each hospital, the
19 applicable total per diem payment adjustment amount under Section
20 14105.98 for the 1991–92 transfer year shall be computed. This
21 amount shall be multiplied by 80 percent of the eligible hospital's
22 annualized Medi-Cal inpatient paid days as determined from all
23 Medi-Cal paid claims records available through April 1, 1991. The
24 products of these calculations for all eligible hospitals with
25 transferor entities as licensees shall be added together to determine
26 an aggregate sum for the 1991–92 transfer year.

27 (3) The aggregate sum determined under paragraph (1) shall be
28 divided by the aggregate sum determined under paragraph (2),
29 yielding a factor to be utilized in paragraph (4).

30 (4) The factor determined in paragraph (3) shall be multiplied
31 by the amount determined for each hospital under paragraph (2).
32 The product of this calculation for each hospital in paragraph (2)
33 shall be divided by 1.771, yielding a transfer amount for the
34 particular transferor entity for the transfer year.

35 (g) For the 1991–92 transfer year, the department shall notify
36 each transferor entity in writing of its applicable transfer amount
37 or amounts.

38 (h) For the 1992–93 transfer year and subsequent transfer years,
39 transfer amounts shall be determined in the same procedural
40 manner as set forth in subdivision (f), except:

1 (1) The department shall use all of the following:

2 (A) The disproportionate share list applicable to the particular
3 transfer year to determine the eligible hospitals.

4 (B) The payment adjustment amounts calculated under Section
5 14105.98 for the particular transfer year. These amounts shall take
6 into account any projected or actual increases or decreases in the
7 size of the payment adjustment program as are required under
8 Section 14105.98 for the particular year in question, including any
9 decreases resulting from the application of the OBRA 1993
10 payment limitation. The department may issue interim, revised,
11 and supplemental transfer requests as necessary and appropriate
12 to address changes in payment adjustment levels that occur under
13 Section 14105.98. All transfer requests, or adjustments thereto,
14 issued to transferor entities by the department shall meet the
15 requirements set forth in subdivision (i).

16 (C) Data regarding annualized Medi-Cal inpatient paid days for
17 the most recent calendar year ending prior to the beginning of the
18 particular transfer year, as determined from all Medi-Cal paid
19 claims records available through April 1 preceding the particular
20 transfer year.

21 (D) The status of public entities as licensees of eligible hospitals
22 as of July 1 of the particular transfer year.

23 (E) For the 1993–94 transfer year and subsequent transfer years,
24 the divisor to be used for purposes of the calculation referred to
25 in paragraph (4) of subdivision (f) shall be determined by the
26 department. The divisor shall be calculated to ensure that the
27 appropriate amount of transfers from transferor entities are received
28 into the fund to satisfy the requirements of Section 14105.98,
29 exclusive of the amounts described in paragraph (2) of this
30 subdivision, and to satisfy the requirements of paragraph (2) of
31 subdivision (d), for the particular transfer year. For the 1993–94
32 transfer year, the divisor shall be 1.742.

33 (F) The following provisions shall apply for certain transfer
34 amounts relating to nonsupplemental payments under Section
35 14105.98:

36 (i) For the 1998–99 transfer year, transfer amounts shall be
37 determined as though the payment adjustment amounts arising
38 pursuant to subdivision (ag) of Section 14105.98 were increased
39 by the amounts paid or payable pursuant to subdivision (af) of
40 Section 14105.98.

(ii) Any transfer amounts paid by a transferor entity pursuant to subparagraph (C) of paragraph (2) shall serve as credit for the particular transferor entity against an equal amount of its transfer obligation for the 1998–99 transfer year.

(iii) For the 1999–2000 transfer year, transfer amounts shall be determined as though the amount to be transferred to the Health Care Deposit Fund, as referred to in paragraph (2) of subdivision (d), were reduced by 28 percent.

(2) (A) Except as provided in subparagraphs (B), (C), and (D), for the 1993–94 transfer year and subsequent transfer years, transfer amounts shall be increased for the particular transfer year in the amounts necessary to fund the nonfederal share of the total supplemental payment adjustment amounts of all types that arise under Section 14105.98. These increases shall be paid only by those transferor entities that are licensees of hospitals that are projected to receive some or all of the particular supplemental payments, and the increases shall be paid by the transferor entities on a pro rata basis in connection with the particular supplemental payments. For purposes of this paragraph, supplemental payment adjustment amounts shall be deemed to arise for the particular transfer year as of the date specified in Section 14105.98. Transfer amounts to fund the nonfederal share of the payments shall be paid for the particular transfer year within 20 days after the department notifies the transferor entity in writing of the additional transfer amount to be paid.

(B) For the 1995–96 transfer year, the nonfederal share of the secondary supplemental payment adjustments described in paragraph (9) of subdivision (y) of Section 14105.98 shall be funded as follows:

(i) Ninety-nine percent of the nonfederal share shall be funded by a transfer from the University of California.

(ii) One percent of the nonfederal share shall be funded by transfers from those public entities that are the licensees of the hospitals included in the “other public hospitals” group referred to in clauses (ii) and (iii) of subparagraph (B) of paragraph (9) of subdivision (y) of Section 14105.98. The transfer responsibilities for this 1 percent shall be allocated to the particular public entities on a pro rata basis, based on a formula or formulae customarily used by the department for allocating transfer amounts under this section. The formula or formulae shall take into account, through

1 reallocation of transfer amounts as appropriate, the situation of
2 hospitals whose secondary supplemental payment adjustments are
3 restricted due to the application of the limitation set forth in clause
4 (v) of subparagraph (B) of paragraph (9) of subdivision (y) of
5 Section 14105.98.

6 (iii) All transfer amounts under this subparagraph shall be paid
7 by the particular transferor entities within 30 days after the
8 department notifies the transferor entity in writing of the transfer
9 amount to be paid.

10 (C) For the 1997–98 transfer year, transfer amounts to fund the
11 nonfederal share of the supplemental payment adjustments
12 described in subdivision (af) of Section 14105.98 shall be funded
13 by a transfer from the County of Los Angeles.

14 (D) (i) For the 1998–99 transfer year, transfer amounts to fund
15 the nonfederal share of the supplemental payment adjustment
16 amounts arising under subdivision (ah) of Section 14105.98 shall
17 be increased as set forth in clause (ii).

18 (ii) The transfer amounts otherwise calculated to fund the
19 supplemental payment adjustments referred to in clause (i) shall
20 be increased on a pro rata basis by an amount equal to 28 percent
21 of the amount to be transferred to the Health Care Deposit Fund
22 for the 1999–2000 fiscal year, as referred to in paragraph (2) of
23 subdivision (d).

24 (3) The department shall prepare preliminary analyses and
25 calculations regarding potential transfer amounts, and potential
26 transferor entities shall be notified by the department of estimated
27 transfer amounts as soon as reasonably feasible regarding any
28 particular transfer year. Written notices of transfer amounts shall
29 be issued by the department as soon as possible with respect to
30 each transfer year. All state agencies shall take all necessary steps
31 in order to supply applicable data to the department to accomplish
32 these tasks. The Office of Statewide Health Planning and
33 Development shall provide to the department quarterly access to
34 the edited and unedited confidential patient discharge data files
35 for all Medi-Cal eligible patients. The department shall maintain
36 the confidentiality of that data to the same extent as is required of
37 the Office of Statewide Health Planning and Development. In
38 addition, the Office of Statewide Health Planning and Development
39 shall provide to the department, not later than March 1 of each
40 year, the data specified by the department, as the data existed on

1 the statewide database file as of February 1 of each year, from all
2 of the following:

3 (A) Hospital annual disclosure reports, filed with the Office of
4 Statewide Health Planning and Development pursuant to former
5 Section 443.31 of, or Section 128735 of, the Health and Safety
6 Code, for hospital fiscal years that ended during the calendar year
7 ending 13 months prior to the applicable February 1.

8 (B) Annual reports of hospitals, filed with the Office of
9 Statewide Health Planning and Development pursuant to former
10 Section 439.2 of, or Section 127285 of, the Health and Safety
11 Code, for the calendar year ending 13 months prior to the
12 applicable February 1.

13 (C) Hospital patient discharge data reports, filed with the Office
14 of Statewide Health Planning and Development pursuant to former
15 subdivision (g) of Section 443.31 of, or Section 128735 of, the
16 Health and Safety Code, for the calendar year ending 13 months
17 prior to the applicable February 1.

18 (D) Any other materials on file with the Office of Statewide
19 Health Planning and Development.

20 (4) Transfer amounts calculated by the department may be
21 increased or decreased by a percentage amount consistent with the
22 Medi-Cal state plan.

23 (5) For the 1993–94 fiscal year, the transfer amount that would
24 otherwise be required from the University of California shall be
25 increased by fifteen million dollars (\$15,000,000).

26 (6) Notwithstanding any other law, except for subparagraph (D)
27 of paragraph (2), the total amount of transfers required from the
28 transferor entities for any particular transfer year shall not exceed
29 the sum of the following:

30 (A) The amount needed to fund the nonfederal share of all
31 payment adjustment amounts applicable to the particular payment
32 adjustment year as calculated under Section 14105.98. Included
33 in the calculations for this purpose shall be any decreases in the
34 program as a whole, and for individual hospitals, that arise due to
35 the provisions of Section 1396r-4(f) or (g) of Title 42 of the United
36 States Code.

37 (B) The amount needed to fund the transfers to the Health Care
38 Deposit Fund, as referred to in subdivision (d).

39 (7) (A) Except as provided in subparagraphs (B) and (C) and
40 in paragraph (2) of subdivision (j), and except for a prudent reserve

not to exceed two million dollars (\$2,000,000) in the Medi-Cal Inpatient Payment Adjustment Fund, any amounts in the fund, including interest that accrues with respect to the amounts in the fund, that are not expended, or estimated to be required for expenditure, under Section 14105.98 with respect to a particular transfer year shall be returned on a pro rata basis to the transferor entities for the particular transfer year within 120 days after the department determines that the funds are not needed for an expenditure in connection with the particular transfer year.

(B) The department shall determine the interest amounts that have accrued in the fund from its inception through June 30, 1995, and, no later than January 1, 1996, shall distribute these interest amounts to transferor entities:

(C) With respect to those particular amounts in the fund resulting solely from the provisions of subparagraph (D) of paragraph (2), the department shall determine by September 30, 1999, whether these particular amounts exceed 28 percent of the amount to be transferred to the Health Care Deposit Fund for the 1999–2000 fiscal year, as referred to in paragraph (2) of subdivision (d). Any excess amount so determined shall be returned to the particular transferor entities on a pro rata basis no later than October 31, 1999.

(D) Regarding any funds returned to a transferor entity under subparagraph (A) or (C), or interest amounts distributed to a transferor entity under subparagraph (B), the department shall provide to the transferor entity a written statement that explains the basis for the particular return or distribution of funds and contains the general calculations used by the department in determining the amount of the particular return or distribution of funds.

(i) (1) For the 1991–92 transfer year, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments.

(2) (A) Except as provided in subparagraphs (B) and (C), for the 1992–93 transfer year and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in eight equal installments. However, for the 1997–98 and subsequent transfer years, each transferor entity shall pay its transfer amount or amounts to the Controller, for deposit in the fund, in the form of periodic

1 installments according to a timetable established by the department.
2 The timetable shall be structured to effectuate, on a reasonable
3 basis, the prompt distribution of all nonsupplemental payment
4 adjustments under Section 14105.98, and transfers to the Health
5 Care Deposit Fund under subdivision (d).

6 (B) For the 1994–95 transfer year, each transferor entity shall
7 pay its transfer amount or amounts to the Controller, for deposit
8 in the fund, in five equal installments.

9 (C) For the 1995–96 transfer year, each transferor entity shall
10 pay its transfer amount or amounts to the Controller, for deposit
11 in the fund, in five equal installments.

12 (D) Except as otherwise specifically provided, subparagraphs
13 (A) to (C), inclusive, shall not apply to increases in transfer
14 amounts described in paragraph (2) of subdivision (h) or to
15 additional transfer amounts described in subdivision (o).

16 (E) All requests for transfer payments, or adjustments thereto,
17 issued by the department shall be in writing and shall include (i)
18 an explanation of the basis for the particular transfer request or
19 transfer activity, (ii) a summary description of program funding
20 status for the particular transfer year, and (iii) the general
21 calculations used by the department in connection with the
22 particular transfer request or transfer activity.

23 (3) A transferor entity may use any of the following funds for
24 purposes of meeting its transfer obligations under this section:

25 (A) General funds of the transferor entity.

26 (B) Any other funds permitted by law to be used for these
27 purposes, except that a transferor entity shall not submit to the
28 Controller any federal funds unless those federal funds are
29 authorized by federal law to be used to match other federal funds.
30 In addition, no private donated funds from any health care provider,
31 or from any person or organization affiliated with the health care
32 provider, shall be channeled through a transferor entity or any
33 other public entity to the fund, unless the donated funds will qualify
34 under federal rules as a valid component of the nonfederal share
35 of the Medi-Cal program and will be matched by federal funds.
36 The transferor entity shall be responsible for determining that funds
37 transferred meet the requirements of this subparagraph.

38 (j) (1) If a transferor entity does not submit any transfer amount
39 within the time period specified in this section, the Controller shall
40 offset immediately the amount owed against any funds which

1 otherwise would be payable by the state to the transferor entity.
2 The Controller, however, shall not impose an offset against any
3 particular funds payable to the transferor entity where the offset
4 would violate state or federal law.

5 (2) Where a withhold or a recoupment occurs pursuant to the
6 provisions of paragraph (2) of subdivision (r) of Section 14105.98,
7 the nonfederal portion of the amount in question shall remain in
8 the fund, or shall be redeposited in the fund by the department, as
9 applicable. The department shall then proceed as follows:

10 (A) If the withhold or recoupment was imposed with respect to
11 a hospital whose licensee was a transferor entity for the particular
12 state fiscal year to which the withhold or recoupment related, the
13 nonfederal portion of the amount withheld or recouped shall serve
14 as a credit for the particular transferor entity against an equal
15 amount of transfer obligations under this section, to be applied
16 whenever the transfer obligations next arise. Should no such
17 transfer obligation arise within 180 days, the department shall
18 return the funds in question to the particular transferor entity within
19 30 days thereafter.

20 (B) For other situations, the withheld or recouped nonfederal
21 portion shall be subject to paragraph (7) of subdivision (h).

22 (k) All transfer amounts received by the Controller or amounts
23 offset by the Controller shall immediately be deposited in the fund.

24 (l) For purposes of this section, the disproportionate share list
25 utilized by the department for a particular transfer year shall be
26 identical to the disproportionate share list utilized by the
27 department for the same state fiscal year for purposes of Section
28 14105.98. Nothing on a disproportionate share list, once issued by
29 the department, shall be modified for any reason other than
30 mathematical or typographical errors or omissions on the part of
31 the department or the Office of Statewide Health Planning and
32 Development in preparation of the list.

33 (m) Neither the intergovernmental transfers required by this
34 section, nor any elective transfer made pursuant to Section 14164,
35 shall create, lead to, or expand the health care funding or service
36 obligations for current or future years for any transferor entity,
37 except as required of the state by this section or as may be required
38 by federal law, in which case the state shall be held harmless by
39 the transferor entities on a pro rata basis.

1 (n) Except as otherwise permitted by state and federal law, no
2 transfer amount submitted to the Controller under this section, and
3 no offset by the Controller pursuant to subdivision (j), shall be
4 claimed or recognized as an allowable element of cost in Medi-Cal
5 cost reports submitted to the department.

6 (o) Whenever additional transfer amounts are required to fund
7 the nonfederal share of payment adjustment amounts under Section
8 14105.98 that are distributed after the close of the particular
9 payment adjustment year to which the payment adjustment amounts
10 apply, the additional transfer amounts shall be paid by the parties
11 who were the transferor entities for the particular transfer year that
12 was concurrent with the particular payment adjustment year. The
13 additional transfer amounts shall be calculated under the formula
14 that was in effect during the particular transfer year. For transfer
15 years prior to the 1993–94 transfer year, the percentage of the
16 additional transfer amounts available for transfer to the Health
17 Care Deposit Fund under subdivision (d) shall be the percentage
18 that was in effect during the particular transfer year. These
19 additional transfer amounts shall be paid by transferor entities
20 within 20 days after the department notifies the transferor entity
21 in writing of the additional transfer amount to be paid.

22 (p) (1) Ten million dollars (\$10,000,000) of the amount
23 transferred from the Medi-Cal Inpatient Payment Adjustment Fund
24 to the Health Care Deposit Fund due to amounts transferred
25 attributable to years prior to the 1993–94 fiscal year is hereby
26 appropriated without regard to fiscal years to the State Department
27 of Health Care Services to be used to support the development of
28 managed care programs under the department's plan to expand
29 Medi-Cal managed care.

30 (2) These funds shall be used by the department for both of the
31 following purposes: (A) distributions to counties or other local
32 entities that contract with the department to receive those funds to
33 offset a portion of the costs of forming the local initiative entity
34 and (B) distributions to local initiative entities that contract with
35 the department to receive those funds to offset a portion of the
36 costs of developing the local initiative health delivery system in
37 accordance with the department's plan to expand Medi-Cal
38 managed care.

39 (3) Entities contracting with the department for any portion of
40 the ten million dollars (\$10,000,000) shall meet the objectives of

1 the department's plan to expand Medi-Cal managed care with
2 regard to traditional and safety net providers.

3 (4) Entities contracting with the department for any portion of
4 the ten million dollars (\$10,000,000) may be authorized under
5 those contracts to utilize their funds to provide for reimbursement
6 of the costs of local organizations and entities incurred in
7 participating in the development and operation of a local initiative.

8 (5) To the full extent permitted by state and federal law, these
9 funds shall be distributed by the department for expenditure at the
10 local level in a manner that qualifies for federal financial
11 participation under the Medicaid Program.

12 (q) (1) Any local initiative entity that has performed
13 unanticipated additional work for the purposes identified in
14 subparagraph (B) of paragraph (2) of subdivision (p) resulting in
15 additional costs attributable to the development of its local initiative
16 health delivery system, may file a claim for reimbursement with
17 the department for the additional costs incurred due to delays in
18 start dates through the 1996–97 fiscal year. The claim shall be
19 filed by the local initiative entity not later than 90 days after the
20 effective date of the act adding this subdivision, and shall not seek
21 extra compensation for any sum that is or could have been asserted
22 pursuant to the contract disputes and appeals resolution provisions
23 of the local initiative entity's respective two-plan model contract.
24 All claims for unanticipated additional incurred costs shall be
25 submitted with adequate supporting documentation including, but
26 not limited to, all of the following:

27 (A) Invoices, receipts, job descriptions, payroll records, work
28 plans, and other materials that identify the unanticipated additional
29 claimed and incurred costs.

30 (B) Documents reflecting mitigation of costs.

31 (C) To the extent lost profits are included in the claim,
32 documentation identifying those profits and the manner of
33 calculation.

34 (D) Documents reflecting the anticipated start date, the actual
35 start date, and reasons for the delay between the dates, if any.

36 (2) In determining any amount to be paid, the department shall
37 do all of the following:

38 (A) Conduct a fiscal analysis of the local initiative entity's
39 claimed costs.

1 (B) Determine the appropriate amount of payment, after taking
2 into consideration the supporting documentation and the results
3 of any audit.

4 (C) Provide funding for any such payment, as approved by the
5 Department of Finance through the deficiency process.

6 (D) Complete the determination required in subparagraph (B)
7 within six months after receipt of a local initiative entity's
8 completed claim and supporting documentation. Prior to final
9 determination, there shall be a review and comment period for that
10 local initiative entity.

11 (E) Make reasonable efforts to obtain federal financial
12 participation. In the event federal financial participation is not
13 allowed for this payment, the state's payment shall be 50 percent
14 of the total amount determined to be payable.

15 (r) Notwithstanding any other law, the Controller may use the
16 moneys in the Medi-Cal Inpatient Payment Adjustment Fund for
17 loans to the General Fund as provided in Sections 16310 and 16381
18 of the Government Code. However, interest shall be paid on all
19 moneys loaned to the General Fund from the Medi-Cal Inpatient
20 Payment Adjustment Fund. Interest payable shall be computed at
21 a rate determined by the Pooled Money Investment Board to be
22 the current earning rate of the fund from which loaned. This
23 subdivision does not authorize any transfer that will interfere with
24 the carrying out of the object for which the Medi-Cal Inpatient
25 Payment Adjustment Fund was created.

26 SEC. 250. Section 14166.221 of the Welfare and Institutions
27 Code is amended to read:

28 14166.221. (a) It is the intent of the Legislature for the
29 department to maximize the receipt of federal funds for California's
30 Medi-Cal program, including this demonstration project, by
31 identifying state resources which will enable the state to obtain
32 additional federal reimbursement during this unprecedented fiscal
33 crisis. It is further the intent of the Legislature that any program
34 identified by the department for the purposes specified in this
35 section shall not be modified or altered in any manner unless
36 subsequent statutory authority is expressly provided by the
37 Legislature.

38 (b) Notwithstanding Section 14166.22, in order to maximize
39 federal claiming under the demonstration project, the department
40 shall have broad discretion to claim federal reimbursement

1 consistent with all applicable federal claiming rules for the
2 following expenditures in an order of priority determined by the
3 department:

4 (1) Expenditures in programs funded in whole or in part by
5 realignment funds under Chapter 6 (commencing with Section
6 17600) of Part 5, including, but not limited to, the County Medical
7 Services Program.

8 (2) Expenditures in programs funded in whole or in part by the
9 County Mental Health Services Act.

10 (3) Other public expenditures, to the extent the department
11 determines the expenditures to be appropriate for claiming under
12 the demonstration project.

13 (4) Expenditures in any programs referenced in subdivision (a)
14 of Section 14166.22 or other state-only funded programs as the
15 department, in its discretion, determines should be used for the
16 purposes of this section. These programs may include programs
17 administered by other state agencies or departments.

18 (c) The department shall have discretion to claim under this
19 section for any and all additional demonstration project funding
20 made available pursuant to any amendments to the demonstration
21 project made on or after October 1, 2008, or pursuant to any federal
22 laws that increase the amount of available funding, including, but
23 not limited to, the federal American Recovery and Reinvestment
24 Act of 2009 (P.L. 111-5). This additional funding shall include
25 federal funds made available due to an increase in the federal
26 medical assistance percentage in addition to any other increase in
27 the amount of federal funding.

28 (d) Any amounts received in the 2008–09, 2009–10, and
29 2010–11 fiscal years from the federal government pursuant to
30 additional demonstration project funding as specified in this section
31 shall be deposited in the Federal Trust Fund. Notwithstanding
32 Section 28.00 of the Budget Act of 2009, the Department of
33 Finance may authorize expenditure of these funds in a manner
34 consistent with federal law and that offsets General Fund
35 expenditures otherwise authorized in the Budget Act of 2009 for
36 the Medi-Cal program, and as appropriated in Item 4260-101-0001
37 of Section 2.00 of that act, or for the Health Care Support Fund.
38 For any adjustments made under the authority provided for by this
39 section, the Department of Finance shall provide notification in
40 writing to the Chairperson of the Joint Legislative Budget

1 Committee not less than 30 days prior to the effective date of the
2 adjustment, or not sooner than whatever lesser time the Chairperson
3 of the Joint Legislative Budget Committee, or his or her designee,
4 may in each instance determine. The notification to the chairperson
5 of the joint committee shall include, at a minimum, the amounts
6 of the proposed appropriation adjustments, a description of any
7 assumptions used in making the adjustments, the relevant federal
8 authority, and any other clarifying description as relevant.

9 (e) If the federal Centers for Medicare and Medicaid Services
10 or any federal or state court issues a ruling that any or all federal
11 dollars obtained by claiming for expenditures from any particular
12 program referenced in subdivision (b) cannot be used to increase
13 state revenues, the department may discontinue use of those
14 expenditures for claiming under this section and substitute other
15 expenditures from other programs referenced in subdivision (b)
16 at its discretion.

17 (f) Notwithstanding Chapter 3.5 (commencing with Section
18 11340) of Part 1 of Division 3 of Title 2 of the Government Code,
19 the department may implement this section by means of a provider
20 bulletin, or other similar instruction, without taking regulatory
21 action. The department shall also provide notification to the Joint
22 Legislative Budget Committee within five working days if that
23 action is taken in order to inform the Legislature that the action is
24 being implemented.

25 SEC. 251. Section 14167.3 of the Welfare and Institutions
26 Code is amended to read:

27 14167.3. (a) Private hospitals shall be paid supplemental
28 amounts for the provision of hospital inpatient services and
29 subacute services as set forth in this section. The supplemental
30 amounts shall be in addition to any other amounts payable to
31 hospitals with respect to those services and shall not affect any
32 other payments to hospitals.

33 (b) Except as set forth in subdivisions (g) and (h), each private
34 hospital shall be paid the following amounts as applicable for the
35 provision of hospital inpatient services for each subject federal
36 fiscal year:

37 (1) Six hundred forty-seven dollars and seventy cents (\$647.70)
38 multiplied by the hospital's general acute care days.

39 (2) Four hundred eighty-five dollars (\$485) multiplied by the
40 hospital's acute psychiatric days that were paid directly by the

1 department and were not the financial responsibility of a mental
2 health plan.

3 (3) One thousand three hundred fifty dollars (\$1,350) multiplied
4 by the number of the hospital's high acuity days if the hospital's
5 Medicaid inpatient utilization rate is less than 41.1 percent, at least
6 5 percent of the hospital's general acute care days are high acuity
7 days, and the hospital is not a small and rural hospital as defined
8 in Section 124840 of the Health and Safety Code. This amount
9 shall be in addition to the amounts specified in paragraphs (1) and
10 (2).

11 (4) One thousand three hundred fifty dollars (\$1,350) multiplied
12 by the number of the hospital's high acuity days if the hospital
13 qualifies to receive the amount set forth in paragraph (3) and has
14 been designated as a Level I, Level II, Adult/Ped Level I, or
15 Adult/Ped Level II trauma center by the Emergency Medical
16 Services Authority established pursuant to Section 1797.1 of the
17 Health and Safety Code. This amount shall be in addition to the
18 amounts specified in paragraphs (1), (2), and (3).

19 (c) A private hospital that provides Medi-Cal subacute services
20 during a subject federal fiscal year and has a Medicaid inpatient
21 utilization rate that is greater than 5.0 percent and less than 26.10
22 percent shall be paid for the provision of subacute services during
23 each subject federal fiscal year a supplemental amount equal to
24 50 percent of the Medi-Cal subacute payments made to the hospital
25 during the 2008 calendar year.

26 (d) (1) In the event federal financial participation for a subject
27 federal fiscal year is not available for all of the supplemental
28 amounts payable to private hospitals under subdivision (b) due to
29 the application of a federal limit or for any other reason, both of
30 the following shall apply:

31 (A) The total amount payable to private hospitals under
32 subdivision (b) for the subject federal fiscal year shall be reduced
33 to reflect the amount for which federal financial participation is
34 available.

35 (B) The amount payable under subdivision (b) to each private
36 hospital for the subject federal fiscal year shall be equal to the
37 amount computed under subdivision (b) multiplied by the ratio of
38 the total amount for which federal financial participation is
39 available to the total amount computed under subdivision (b).

(2) In the event federal financial participation for a subject federal fiscal year is not available for all of the supplemental amounts payable to private hospitals under subdivision (c) due to the application of a federal upper limit or for any other reason, both of the following shall apply:

(A) The total amount payable to private hospitals under subdivision (c) for the subject federal fiscal year shall be reduced to reflect the amount for which federal financial participation is available.

(B) The amount payable under subdivision (c) to each private hospital for the subject federal fiscal year shall be equal to the amount computed under subdivision (c) multiplied by the ratio of the total amount for which federal financial participation is available to the total amount computed under subdivision (c).

(e) In the event the amount otherwise payable to a hospital under this section for a subject federal fiscal year exceeds the amount for which federal financial participation is available for that hospital, the amount due to the hospital for that federal fiscal year shall be reduced to the amount for which federal financial participation is available.

(f) The amounts set forth in this section are inclusive of federal financial participation.

(g) No payments shall be made under this section to a new hospital.

(h) No payments shall be made under this section to a converted hospital for the subject federal fiscal year in which the hospital becomes a converted hospital or for subsequent subject federal fiscal years.

SEC. 252. Section 14167.6 of the Welfare and Institutions Code is amended to read:

14167.6. (a) The department shall enhance payments to Medi-Cal managed health care plans for the subject federal fiscal years as set forth in this section.

(b) The enhanced payments shall be made as part of the monthly capitated payments made by the department to managed health care plans.

(c) The department shall determine the amount of the enhanced payments to managed health care plans for each subject month consistent with the following objectives:

1 (1) Pay to managed health care plans in the aggregate the sum
2 of the individual hospital managed care supplemental payments
3 for each month.

4 (2) Result in payment of the individual hospital managed care
5 supplemental payment to each subject hospital in accordance with
6 Section 14167.10.

7 (3) Result in rates that may be certified as actuarially sound.

8 (4) Result in rates that are approved by the federal government
9 for purposes of federal financial participation.

10 (d) The department shall make enhanced payments to managed
11 health care plans exclusively for the purpose of making
12 supplemental payments to hospitals, in order to support the
13 availability of hospital services and ensure access for Medi-Cal
14 beneficiaries. Managed health care plans shall pass through
15 enhanced payments to hospitals in a manner determined by the
16 department. The enhanced payments to managed health care plans
17 shall be made as follows:

18 (1) The enhanced payments shall commence during the second
19 month following the month during which the quality assurance
20 fee set forth in Article 5.22 (commencing with Section 14167.31)
21 is due and payable from hospitals if the quality assurance fee
22 includes funds for enhanced payments to managed health care
23 plans. The last enhanced payments made pursuant to this section
24 shall be made during December 2010.

25 (2) The enhanced payments made during the first month in
26 which enhanced payments are made pursuant to this section shall
27 include the sum of the enhanced payments for all prior months for
28 which payments are due.

29 (3) The enhanced payments made during December 2010 shall
30 include payments for December 2010 to September 2011, inclusive,
31 to the extent that federal financial participation is available for the
32 enhanced payments.

33 (e) Payments to managed health care plans that would be paid
34 in the absence of the payments made pursuant to this section shall
35 not be reduced as a consequence of payment under this section.

36 (f) (1) Each managed health care plan shall expend, in the form
37 of supplemental payments to hospitals, 100 percent of any rate
38 enhanced payments it receives under this section, pursuant to
39 Section 14167.10.

(2) Interest earned by the managed health care plans during timely implementation of subdivision (b) of Section 14167.10 shall be in lieu of any administrative fee that the department might otherwise pay to the plans for implementation of this article.

(3) The department may issue change orders to amend contracts with managed health care plans on either a quarterly or semiannual basis to adjust monthly capitation payments to coincide with updated enrollment data so that the amounts paid to hospitals pursuant to this section equals, or nearly equals, the amounts set forth in subdivision (a) of Section 14167.10.

(g) In the event federal financial participation is not available for all of the enhanced managed care payments determined for a month pursuant to this section for any reason, the enhanced payments mandated by this section for that month shall be reduced proportionately to the amount for which federal financial participation is available.

(h) Enhanced payments to a managed health care plan pursuant to this section shall not be taken into consideration by the department or the Department of Managed Health Care in determining the percentage of total costs attributed to administrative costs for the purposes of determining compliance with any administrative costs limit, including, but not limited to, those described in Sections 14087.101 and 14464 of this code, Section 1378 of the Health and Safety Code, and Section 1300.78 of Title 28 of the California Code of Regulations.

(i) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement this section by means of policy letters or similar instructions, without taking further regulatory action.

SEC. 253. Section 14167.7 of the Welfare and Institutions Code is amended to read:

14167.7. (a) The amount of any payments made under this article to private hospitals, including the amount of payments made under Sections 14167.2 and 14167.3 and additional payments to private hospitals by managed health care plans pursuant to Section 14167.6, shall not be included in the calculation of the low-income percent or the OBRA 1993 payment limitation, as defined in paragraph (24) of subdivision (a) of Section 14105.98, for purposes

1 of determining payments to private hospitals pursuant to Section
2 14166.11.

3 (b) The amount of any payments made to a hospital under this
4 article shall not be included in the calculation of stabilization
5 funding under Article 5.2 (commencing with Section 14166).

6 SEC. 254. Section 14167.10 of the Welfare and Institutions
7 Code is amended to read:

8 14167.10. (a) (1) At the same time that the department makes
9 an enhanced payment to a managed health care plan under Section
10 14167.6, the department shall notify the plan of each hospital to
11 which the plan shall make supplemental managed care payments
12 as a consequence of receiving the enhanced payment and the
13 amount of the supplemental payment. The department shall
14 determine the amount of the supplemental payment due to each
15 subject hospital so that the total supplemental managed care
16 payments to the hospital from all managed health care plans
17 resulting from payments made to the managed health care plans
18 for the subject month under Section 14167.6 equals or
19 approximately equals the hospital's individual hospital managed
20 care supplemental payment.

21 (2) In the case of the enhanced payments made to a managed
22 health care plan during the first month in which the payments are
23 made to the plan, the amounts of supplemental payments due to
24 each hospital pursuant to paragraph (1) shall be multiplied by the
25 number of months for which the enhanced payments were made.

26 (3) The notice provided by the department in connection with
27 the enhanced managed care payments to each managed health care
28 plan during December 2010 shall also direct the managed health
29 care plan to make monthly supplemental payments to hospitals for
30 months, if any, from January 2011 to September 2011, inclusive,
31 for which federal financial participation is available as described
32 in paragraph (3) of subdivision (d) of Section 14167.6 and the
33 amount of the supplemental payments as calculated pursuant to
34 this subdivision.

35 (b) Each managed health care plan receiving payments under
36 Section 14167.6 shall make supplemental payments to hospitals
37 within 30 days of receiving the payments under Section 14167.6,
38 except that if the managed health care plan receives enhanced
39 payments during December 2010, which include payments relating
40 to some or all of the month of January 2011 to September 2011,

1 inclusive, the managed health care plan shall make payments
2 relating to the months of January 2011 to September 2011,
3 inclusive, during each month to which the payment relates. The
4 payments shall be made to those hospitals and in those amounts
5 set forth by the department in its notice provided pursuant to
6 subdivision (a).

7 (c) The supplemental payments made to hospitals pursuant to
8 this section shall be in addition to any other amounts payable to
9 hospitals by a managed health care plan or otherwise and shall not
10 affect any other payments to hospitals.

11 (d) For each subject federal fiscal year, the sum of all
12 supplemental payments made by a managed health care plan to
13 subject hospitals pursuant to this section shall equal, or
14 approximately equal, all enhanced payments received by the
15 managed health care plan from the department pursuant to Section
16 14167.6.

17 (e) Managed health care plans shall not take into account
18 payments made pursuant to this article in negotiating the amount
19 of payments to hospitals that are not made pursuant to this article.

20 (f) The obligations of a Medi-Cal managed health care plan to
21 make payments to a hospital for services furnished by the hospital
22 that are not covered by a contract between the managed health
23 care plan and the hospital, including the amounts of payments
24 required apart from payments under this article, shall not be
25 affected by any payments made under this article.

26 (g) In the event federal financial participation for a month is
27 not available for all of the enhanced managed health care plan
28 payments pursuant to Section 14167.6 for any reason, the
29 supplemental payments made to hospitals under this section shall
30 be reduced proportionately to the amount for which federal
31 financial participation is available, and the department's notice
32 under subdivision (a) shall reflect that reduction.

33 (h) No payments shall be made under this section to a new
34 hospital.

35 (i) Any delegation or attempted delegation by a managed health
36 care plan of its obligation to make payments under this section
37 shall not relieve the plan from its obligation to make those
38 payments. Managed health care plans shall submit the
39 documentation the department may require to demonstrate
40 compliance with this subdivision. The documentation shall

1 demonstrate actual payments to hospitals, and not assignment to
2 subcontractors of the managed health care plan's obligation of the
3 duty to pay hospitals. The department and each managed health
4 care plan shall make available to each subject hospital, within 15
5 days of receipt of the hospital's written request, documentation
6 demonstrating the amount that the plan paid to the subject hospital
7 for a subject month and the amount due from the plan to the subject
8 hospital for the subject month.

9 (j) If the department determines that a managed health care plan
10 has failed to pay any enhanced payment amounts it received
11 pursuant to Section 14167.6 to hospitals as required by this section,
12 the department shall immediately recover the amounts determined
13 by an offset to the capitation payments made to the managed health
14 care plan and by any other legal means available. At least 30
15 calendar days prior to seeking any recovery, the department shall
16 notify the managed health care plan to explain the nature of the
17 department's determination, to establish the amount of the
18 enhanced payment amount in excess of supplemental payments to
19 hospitals, and to describe the recovery process. The department
20 may terminate any or all contracts between the department and a
21 managed health care plan that fails to make payments as required
22 by this section.

23 (k) The department shall pay to a managed health care plan or
24 plans, as the director determines is or are appropriate, any amounts
25 recovered under subdivision (j) for the purpose of making payments
26 to hospitals pursuant to this section and shall direct the managed
27 health care plan or plans receiving those amounts to make specific
28 payments to specific hospitals to ensure that hospitals receive the
29 amounts set forth in this section.

30 (l) Managed health care plans shall in no event be obligated
31 under this section to make supplemental payments to hospitals that
32 exceed the enhanced payments made to the managed care health
33 plans under Section 14167.6.

34 SEC. 255. Section 14522.4 of the Welfare and Institutions
35 Code is amended to read:

36 14522.4. (a) The following definitions shall apply for the
37 purposes of this chapter:

38 (1) "Activities of daily living (ADL)" means activities performed
39 by the participant for essential living purposes, including bathing,
40 dressing, self-feeding, toileting, ambulation, and transferring.

(2) “Instrumental activities of daily living (IADL)” means functions or tasks of independent living limited to hygiene and medication management.

(3) “Personal health care provider” means the participant’s personal physician, physician’s assistant, or nurse practitioner, operating within his or her scope of practice.

(4) “Care coordination” means the process of obtaining information from, or providing information to, the participant, the participant’s family, the participant’s personal health care provider, or social services agencies to facilitate the delivery of services designed to meet the needs of the participant, as identified by one or more members of the multidisciplinary team.

(5) “Facilitated participation” means an interaction to support a participant’s involvement in a group or individual activity, whether or not the participant takes active part in the activity itself.

(6) “Group work” means a social work service in which a variety of therapeutic methods are applied within a small group setting to promote participants’ self-expression and positive adaptation to their environment.

(7) “Professional nursing” means services provided by a registered nurse or licensed vocational nurse functioning within his or her scope of practice.

(8) “Psychosocial” means a participant’s psychological status in relation to the participant’s social and physical environment.

(9) “Assistance” means verbal or physical prompting or aid, including cueing, supervision, stand-by assistance, or hands-on support to complete the task correctly.

(10) “Substantial human assistance” means direct, hands-on assistance provided by a qualified caregiver, which entails physically helping the participant perform the essential elements of the ADLs and IADLs. It entails more than cueing, supervision, or stand-by assistance to perform the ADLs and IADLs. It also includes the performance of the entire ADL or IADL for participants totally dependent on human assistance.

(11) “Cognitive impairment” means the loss or deterioration of intellectual capacity characterized by impairments in short- or long-term memory, language, concentration and attention, orientation to people, place, or time, visual-spatial abilities or executive functions, or both, including, but not limited to, judgment, reasoning, or the ability to inhibit behaviors that interfere

1 with social, occupational, or everyday functioning due to
2 conditions, including, but not limited to, mild cognitive impairment,
3 Alzheimer's disease or other form of dementia, or brain injury.

4 (b) Upon the date of execution of the declaration described
5 under subdivision (g) of Section 14525.1, this section shall become
6 operative and Section 14522.3 shall become inoperative and on
7 that date is repealed.

8 SEC. 256. Section 14598 of the Welfare and Institutions Code
9 is amended to read:

10 14598. (a) The Legislature finds and declares both of the
11 following:

12 (1) The demonstration projects authorized by this article have
13 proven to be successful at providing comprehensive,
14 community-based services to frail elderly individuals at no greater
15 cost than for providing nursing home care.

16 (2) Based upon that success, California now desires to provide
17 community-based, risk-based, and capitated long-term care services
18 under the Programs of All-Inclusive Care for the Elderly (PACE)
19 as optional services under California's Medicaid state plan and
20 under contracts, entered into between the federal Centers for
21 Medicare and Medicaid Services, the department, as the single
22 state medicaid agency, and PACE organizations, meeting the
23 requirements of the Balanced Budget Act of 1997 (P.L. 105-33)
24 and Part 460 (commencing with Section 460.2) of Subchapter E
25 of Chapter IV of Title 42 of the Code of Federal Regulations.

26 (b) The department may enter into the contracts specified in
27 subdivision (a) for implementation of the PACE program, and also
28 may enter into separate contracts with the PACE organizations
29 contracting under subdivision (a), to fully implement the single
30 state agency responsibilities assumed by the department in those
31 contracts, Section 14132.94, and any other state requirement found
32 necessary by the department to provide comprehensive
33 community-based, risk-based, and capitated long-term care services
34 to California's frail elderly. The department may enter into separate
35 contracts specified in subdivision (a) with up to 10 PACE
36 organizations. The department may not enter into any contracts
37 specified in subdivision (a) unless a Medicaid state plan
38 amendment, electing PACE as a state Medicaid option as provided
39 for in Section 14132.94, has been approved by the federal Centers
40 for Medicare and Medicaid Services.

(c) Notwithstanding subdivisions (a) and (b), any demonstration project contract entered into under this article prior to January 1, 2004, shall remain in full force and effect under its own terms, but shall not be renewed or amended beyond the termination date in effect on that date.

(d) The requirements of the PACE model, as provided for pursuant to Section 1894 (42 U.S.C. Sec. 1395eee) and Section 1934 (42 U.S.C. Sec. 1396u-4) of the federal Social Security Act, shall not be waived or modified. The requirements that shall not be waived or modified include all of the following:

(1) The focus on frail elderly qualifying individuals who require the level of care provided in a nursing facility.

(2) The delivery of comprehensive, integrated acute and long-term care services.

(3) The interdisciplinary team approach to care management and service delivery.

(4) Capitated, integrated financing that allows the provider to pool payments received from public and private programs and individuals.

(5) The assumption by the provider of full financial risk.

(6) The provision of a PACE benefit package for all participants, regardless of source of payment, that shall include all of the following:

(A) All Medicare-covered items and services.

(B) All Medicaid-covered items and services, as specified in the state's Medicaid plan.

(C) Other services determined necessary by the interdisciplinary team to improve and maintain the participant's overall health status.

(e) For purposes of this section, "PACE organizations" means those entities as defined in Section 460.6 of Title 42 of the Code of Federal Regulations.

SEC. 257. Section 16124 of the Welfare and Institutions Code is amended to read:

16124. (a) (1) Upon the appropriation of funds by the Legislature for the purposes set forth in this section, the State Department of Social Services shall establish a project in four counties and one state district office of the department to provide preadoption and postadoption services to ensure the successful adoption of children and youth who have been in foster care 18

1 months or more, are at least nine years of age, and are placed in
2 an unrelated foster home or in a group home.

3 (2) The participating entities shall include the following:

4 (A) City and County of San Francisco.

5 (B) County of Los Angeles.

6 (C) Two additional counties and one state district office, based
7 on criteria developed by the department in consultation with the
8 County Welfare Directors Association, which shall demonstrate
9 geographic diversity.

10 (3) A county that elects to apply for funding pursuant to this
11 section shall submit an application to the department no later than
12 a date determined by the department to ensure timely allocation
13 of funds. The department shall review the applications received,
14 and select the eligible counties in accordance with this section.

15 (b) Each entity identified pursuant to paragraph (2) of
16 subdivision (a) shall receive funding to provide preadoption and
17 postadoption services to the adoptive parents and the targeted
18 population identified in paragraph (1) of subdivision (a).

19 (1) Preadoption and postadoption services for the child and each
20 family may include, but shall not be limited to, all of the following:

21 (A) Individualized or other recruitment efforts.

22 (B) Postadoption services, including respite care.

23 (C) Behavioral health services.

24 (D) Peer support groups.

25 (E) Information and referral services.

26 (F) Other locally designed services, as appropriate.

27 (G) Relative search efforts.

28 (H) Training of adoptive parents, foster youth, or mentoring
29 families.

30 (I) Mediation services.

31 (J) Facilitation of siblings in the same placement.

32 (K) Facilitation of postadoption contact.

33 (L) Engaging youth in permanency decisionmaking.

34 (M) Any service or support necessary to resolve any identified
35 barrier to adoption.

36 (2) The services specified in paragraph (1) may be provided
37 directly by the county, contracted for by the county, or provided
38 through reimbursement to the family, as approved by the county.

1 (c) The amount of funding provided in the appropriation of
2 funds provided by the annual Budget Act to each county
3 participating in the project shall be allocated as follows:

4 (1) Seven hundred fifty thousand dollars (\$750,000) to the City
5 and County of San Francisco.

6 (2) One million two hundred fifty thousand dollars (\$1,250,000)
7 to the County of Los Angeles.

8 (3) A total of two million dollars (\$2,000,000), to be awarded
9 to the two additional counties and the district office selected
10 pursuant to subparagraph (C) of paragraph (2) of subdivision (a),
11 minus any funds subtracted by the department for the purpose of
12 administering the project. The amount of funds provided to the
13 department for administration of the project, including the costs
14 of collecting and analyzing data pursuant to subdivision (h) and
15 developing the information pursuant to subdivision (i), shall not
16 exceed three hundred thousand dollars (\$300,000).

17 (4) If the appropriated amount in the annual Budget Act differs
18 from the total amount specified above, then the funds shall be
19 distributed in the same proportion as the amounts listed in
20 paragraphs (1) to (3), inclusive.

21 (d) Funds shall be allocated to the counties pursuant to
22 subdivision (c) no later than January 1 of each year, and shall
23 remain available for expenditure until June 30, 2010.

24 (e) (1) The department shall seek approval for any federal
25 matching funds that may be available to supplement the project.

26 (2) The implementation of the project shall not be dependent
27 upon the receipt of federal funding.

28 (3) Project funds shall supplement, and not supplant, existing
29 federal, state, and local funds, and shall be used only in accordance
30 with the terms and conditions of the project.

31 (4) No expenditure made for services specified in subdivision
32 (b) may be made to the extent that it renders the family ineligible
33 for federal adoption assistance.

34 (f) The project shall be implemented only upon the adoption of
35 a resolution adopted by each county board of supervisors.

36 (g) The department shall work with the counties to develop the
37 requirements for the project, including the number of families that
38 may participate in the project, given the available resources, and
39 guidelines for data collection, as required by subdivision (h).

1 (h) (1) The department shall work with the participating county
2 and the state district office to analyze the effects of the project.

3 (2) Measures assessed by the state and counties shall include,
4 but shall not be limited to, the following:

5 (A) The extent to which the adoptions of the targeted population
6 identified in paragraph (1) of subdivision (a) increased as a result
7 of the project.

8 (B) The number of families and children served by the project.

9 (C) The type and amount of preadoption and postadoption
10 services that were provided to children and families under the
11 project.

12 (i) The department shall provide information to the Legislature
13 on the results of the project by May 31, 2011.

14 (j) Adoption programs in the project counties shall be
15 encouraged to create public-private partnerships with private
16 adoption agencies to maximize their success in improving
17 permanent outcomes for older foster youth.

18 SEC. 258. Section 18220.1 of the Welfare and Institutions
19 Code is amended to read:

20 18220.1. Of the amount deposited in the Local Safety and
21 Protection Account in the Transportation Fund authorized by
22 Section 10752.2 of the Revenue and Taxation Code, the Controller
23 shall allocate 6.50 percent in the 2008–09 fiscal year and 5.85
24 percent in the 2009–10 fiscal year and each year thereafter. The
25 Controller shall allocate these funds on a quarterly basis beginning
26 April 1, 2009, to the Department of Corrections and Rehabilitation.
27 The department shall allocate the funds appropriated in the Budget
28 Act of 2008 and included in the Local Safety and Protection
29 Account among counties that operate juvenile camps and ranches
30 based on the number of occupied beds in each camp as of 12:01
31 a.m. each day, up to the Corrections Standards Authority rated
32 maximum capacity, as determined by the Corrections Standards
33 Authority.

34 SEC. 259. Section 18987.62 of the Welfare and Institutions
35 Code is amended to read:

36 18987.62. (a) Upon request from a county, the director may
37 waive regulations governing foster care payments or the operation
38 of group homes to enable counties to implement the agreements
39 established pursuant to Section 18987.61. Waivers granted by the
40 director shall be applicable only to services provided under the

1 terms of the agreement and for the duration of the agreement,
2 whichever is earlier, unless the director authorizes an extension
3 of the waiver pursuant to subdivision (f). A waiver shall only be
4 granted when all of the following apply:

5 (1) The agreement promises to offer a worthwhile test of an
6 innovative approach or to encourage the development of a new
7 service for which there is a recognized need.

8 (2) The regulatory requirement prevents the implementation of
9 the agreement.

10 (3) The requesting county proposes to monitor the agreement
11 through performance measures that ensure that the purposes of the
12 waived regulation will be achieved.

13 (b) The director shall take steps that are necessary to prevent
14 the loss of any substantial amounts of federal funds as a result of
15 the waivers granted under this section. The waiver may specify
16 the extent to which the requesting county shall share in any cost
17 resulting from any loss of federal funding.

18 (c) The director shall not waive regulations that apply to the
19 health and safety of children served by participating private
20 nonprofit agencies.

21 (d) The director shall notify the appropriate policy and fiscal
22 committees of the Legislature whenever waivers are granted and
23 when a waiver of regulations was required for the implementation
24 of the county's proposed agreement. The director shall identify
25 the reason why the development of the services outlined by the
26 agreement between the county and the service provider are hindered
27 by the regulations to be waived.

28 (e) The county or private nonprofit agency shall fund an
29 independent evaluation of the waiver, as described in subdivision
30 (f) of Section 18987.61.

31 (f) The director may grant a county's request to extend the
32 waiver for up to an additional three years based upon a review and
33 analysis of all of the following information:

34 (1) The results of the report, if required under subdivision (e)
35 of Section 18987.61.

36 (2) The results of the independent evaluation of the waiver,
37 pursuant to subdivision (e) of this section.

38 (3) Justification for the extension, and verification of continued
39 compliance with this section.

1 (g) (1) For any waiver approved on or before January 1, 2010,
2 an extension of the waiver for up to an additional three years may
3 be based upon the department's review and analysis of the
4 information required to be submitted in subdivision (f).

5 (2) If an independent evaluation has not yet been completed,
6 the department may grant an extension based upon its review of
7 available information. However, an independent evaluation shall
8 be required to be completed within one year prior to the end of the
9 waiver.

10 SEC. 260. Section 5.1 of the Castaic Lake Water Agency Law
11 (Chapter 28 of the Statutes of 1962, First Extraordinary Session),
12 as amended by Chapter 688 of the Statutes of 2008, is amended
13 to read:

14 Sec.5.1. (a) Notwithstanding any other provision of the Castaic
15 Lake Water Agency Law, the number of directors on the board
16 shall be as follows:

17 (1) One nominee for the office of appointed director shall be
18 nominated by each purveyor and submitted in writing to the board
19 of directors. The board of directors shall appoint each nominee
20 within 30 days after the nomination is submitted, or may within
21 the same time period by resolution reject any nominee for cause
22 which is documented in the resolution by a detailed statement of
23 reasons. If the board of directors rejects a nominee of any purveyor,
24 the affected purveyor shall promptly submit a second and different
25 nominee to the board of directors. The board of directors shall
26 appoint the second nominee within 30 days after the second
27 nomination is submitted, or may within the same time period
28 likewise by resolution reject that second nominee for cause which
29 is documented in the resolution by a detailed statement of reasons.
30 If the board of directors rejects any second nominee of any
31 purveyor, the affected purveyor shall select a third and still different
32 nominee, which nominee shall be entitled without further board
33 action to take an oath of office as required by law and to thereafter
34 serve as an appointed director of the agency.

35 (2) A nominee of a purveyor may be a shareholder, director,
36 officer, agent, or employee of the nominating purveyor, and shall
37 be a registered voter within Los Angeles County or Ventura
38 County. Any nominee of a purveyor who is the chief executive
39 officer, chief operating officer, or the general manager of the
40 purveyor shall be rejected for appointment only on the ground that

1 the nominee is legally disqualified from holding the office of
2 director by reason of a provision of law applicable to appointed
3 directors of the agency.

4 (3) The term of office of an appointed director is four years.

5 (4) Upon expiration of an initial term of office of an appointed
6 director, the office of that appointed director shall be filled pursuant
7 to Section 5.2. If a vacancy occurs in the office of an appointed
8 director, it shall be filled in the same manner as is provided in
9 subdivisions (a) and (b) of Section 5.2 for the appointment of a
10 successor appointed director, except that the purveyor or its
11 successor in interest to which the vacancy relates shall within not
12 more than 60 days of the occurrence of the vacancy nominate a
13 person for appointment to the vacant office, and the vacant office
14 shall be filled by the board of directors not later than 30 days after
15 that nomination.

16 (5) An incumbent in the office of appointed director shall be
17 subject to recall by the voters of the entire agency in accordance
18 with Division 11 (commencing with Section 11000) of the
19 Elections Code, except that any vacancy created by a successful
20 recall shall be filled in accordance with the procedure provided by
21 this section for a vacancy created other than by a recall election.

22 (b) (1) Notwithstanding any other provision of the Castaic Lake
23 Water Agency Law, if the agency acquires a private water
24 purveyor, the term of office of the director appointed by the private
25 purveyor shall terminate at noon on the first Monday after January
26 1 of the year following the acquisition.

27 (2) The successor to the director described in paragraph (1) shall
28 be elected at-large by agency voters at the statewide general
29 election held in November of the even-numbered year following
30 the acquisition, and shall take office at noon on the first Monday
31 after January 1 of the year following the election. The successor
32 and each elected director thereafter to hold the office described in
33 this subdivision shall hold office for the term of four years from
34 the date of taking office and until the election and qualification of
35 the next director to hold that office.

36 (3) The elected office described in paragraph (2) shall cease to
37 exist upon the abolishment of the offices of appointed directors
38 pursuant to subdivision (c) of Section 5.2.

39 (4) Paragraph (1) shall not be effective with respect to the
40 director appointed by the Santa Clarita Water Company until a

1 court of competent jurisdiction issues a final decision holding that
2 the agency acquired the company.

3 SEC. 261. Section 1 of the Osteopathic Act, as amended by
4 Section 69 of Chapter 18 of the 2009–10 Fourth Extraordinary
5 Session, is amended to read:

6 Section 1. A self-sustaining Osteopathic Medical Board of
7 California to consist of seven members and to be known as the
8 “Osteopathic Medical Board of California” is hereby created and
9 established. The Governor shall appoint the members of the board,
10 each of whom shall have been a citizen of this state and in active
11 practice for at least five years next preceding his or her
12 appointment. Five of the members shall be appointed from among
13 persons who are graduates of osteopathic schools who hold
14 unrevoked physician’s and surgeon’s D.O. licenses or certificates
15 to practice in this state. Two members shall be naturopathic doctors
16 licensed under the Naturopathic Doctors Act (Chapter 8.2
17 (commencing with Section 3610) of Division 2 of the Business
18 and Professions Code). No one residing or practicing outside of
19 this state may be appointed to, or sit as a member of, the board.
20 The Governor shall fill by appointment all vacancies on the board
21 for the unexpired term. The term of office of each member shall
22 be three years, provided that, of the first board appointed, one shall
23 be appointed for one year, two for two years, and two for three
24 years, and that thereafter all appointments shall be for three years,
25 except that appointments to fill vacancies shall be for the unexpired
26 term only. No member shall serve for more than three full
27 consecutive terms. The Governor shall have power to remove from
28 office any osteopathic physician and surgeon member of the board
29 for neglect of duty required by the Osteopathic Act or Medical
30 Practice Act (Chapter 5 (commencing with Section 2000) of
31 Division 2 of the Business and Professions Code). The Governor
32 shall have power to remove from office any naturopathic doctor
33 member of the board for neglect of duty required by the
34 Naturopathic Doctors Act. The Governor shall have power to
35 remove any member of the board for no longer complying with
36 the residency or practice requirements of this section, for
37 incompetency, or for unprofessional conduct. Each member of the
38 board shall, before entering upon the duties of his or her office,
39 take the constitutional oath of office. All fees collected on behalf
40 of the Osteopathic Medical Board of California and all receipts of

1 every kind and nature shall be reported at the beginning of each
2 month for the month preceding, to the Controller and at the same
3 time the entire amount must be paid into the State Treasury and
4 shall be credited to a fund to be known as the Osteopathic Medical
5 Board of California Contingent Fund, which fund is hereby created.
6 The contingent fund shall be for the use of the Osteopathic Medical
7 Board of California and out of it and not otherwise shall be paid
8 all expenses of the board. Each member of the board shall receive
9 a per diem and expenses as provided in Section 103 of the Business
10 and Professions Code, provided that the fees and other receipts of
11 the board are sufficient to meet this expense.

12 The Governor shall appoint the members of the board within 30
13 days after this act takes effect. The board shall be organized within
14 60 days after the appointment of its members by the Governor by
15 electing from its number a president, vice president, and a secretary
16 who shall also be the treasurer, who shall hold their respective
17 positions during the pleasure of the board. The board shall hold
18 one meeting during the first quarter of each calendar year at a time
19 and place designated by the board with power of adjournment from
20 time to time until its business is concluded. Special meetings of
21 the board may be held at such time and place as the board may
22 designate. Notice of each regular or special meeting shall be given
23 twice a week for two weeks next preceding each meeting in one
24 daily paper published in the City of San Francisco, one published
25 in the City of Sacramento, and one published in the City of Los
26 Angeles which notice shall also specify the time and place of
27 holding the examination of applicants. The secretary of the board
28 upon an authorization from the president of the board, or the
29 chairperson of the committee, may call meetings of any duly
30 appointed committee of the board at a specified time and place
31 and it shall not be necessary to advertise those committee meetings.
32 The board shall receive through its secretary applications for
33 certificates to be issued by the board and shall, on or before the
34 first day of January in each year, transmit to the Governor a full
35 report of all its proceedings together with a report of its receipts
36 and disbursements.

37 The office of the board shall be in the City of Sacramento.
38 Suboffices may be established in Los Angeles and San Francisco
39 and records as may be necessary may be transferred temporarily

1 to those suboffices. Legal proceedings against the board may be
2 instituted in any one of the three cities.

3 The board may from time to time adopt rules as may be necessary
4 to enable it to carry into effect the provisions of this act. It shall
5 require the affirmative vote of a majority of the members of the
6 board to carry any motion or resolution, to adopt any rules, pass
7 any measure or to authorize the issuance or the revocation of any
8 certificate. Any member of the board may administer oaths in all
9 matters pertaining to the duties of the board and the board shall
10 have authority to take evidence in any matter cognizable by it. The
11 board shall keep an official record of its proceedings, a part of
12 which record shall consist of a register of all applicants for
13 certificates under this act together with the action of the board
14 upon each application.

15 The board shall have the power to employ legal counsel to advise
16 and assist it in connection with all matters cognizable by the board
17 or in connection with any litigation or legal proceedings instituted
18 by or against the board and may also employ clerical assistance
19 as it may deem necessary to carry into effect this act. The board
20 may fix the compensation to be paid for those services and may
21 incur other expense as it may deem necessary, provided, however,
22 that all of that expense shall be payable only from the fund
23 hereinbefore provided for and to be known as the Osteopathic
24 Medical Board of California Contingent Fund.

25 This section shall remain in effect only until January 1, 2013,
26 and as of that date is repealed, unless a later enacted statute, that
27 is enacted before January 1, 2013, deletes or extends that date.

28 SEC. 262. Section 1 of the Osteopathic Act, as added by
29 Section 70 of Chapter 18 of the 2009-10 Fourth Extraordinary
30 Session, is amended to read:

31 Section 1. A self-sustaining Osteopathic Medical Board of
32 California to consist of five members and to be known as the
33 “Osteopathic Medical Board of California” is hereby created and
34 established. The Governor shall appoint the members of the board,
35 each of whom shall have been a citizen of this state and in active
36 practice for at least five years next preceding his or her
37 appointment. Each of the members shall be appointed from among
38 persons who are graduates of osteopathic schools who hold
39 unrevoked physician’s and surgeon’s D.O. licenses or certificates
40 to practice in this state. No one residing or practicing outside of

1 this state may be appointed to, or sit as a member of, the board.
2 The Governor shall fill by appointment all vacancies on the board
3 for the unexpired term. The term of office of each member shall
4 be three years, provided that, of the first board appointed, one shall
5 be appointed for one year, two for two years, and two for three
6 years, and that thereafter all appointments shall be for three years,
7 except that appointments to fill vacancies shall be for the unexpired
8 term only. No member shall serve for more than three full
9 consecutive terms. The Governor shall have power to remove from
10 office any member of the board for neglect of duty required by the
11 Osteopathic Act or Medical Practice Act (Chapter 5 (commencing
12 with Section 2000) of Division 2 of the Business and Professions
13 Code), for no longer complying with the residency or practice
14 requirements of this section, for incompetency, or for
15 unprofessional conduct. Each member of the board shall, before
16 entering upon the duties of his or her office, take the constitutional
17 oath of office. All fees collected on behalf of the Osteopathic
18 Medical Board of California and all receipts of every kind and
19 nature shall be reported at the beginning of each month for the
20 month preceding, to the Controller and at the same time the entire
21 amount must be paid into the State Treasury and shall be credited
22 to a fund to be known as the Osteopathic Medical Board of
23 California Contingent Fund, which fund is hereby created. The
24 contingent fund shall be for the use of the Osteopathic Medical
25 Board of California and out of it and not otherwise shall be paid
26 all expenses of the board. Each member of the board shall receive
27 a per diem and expenses as provided in Section 103 of the Business
28 and Professions Code, provided that the fees and other receipts of
29 the board are sufficient to meet this expense.

30 The Governor shall appoint the members of the board within 30
31 days after this act takes effect. The board shall be organized within
32 60 days after the appointment of its members by the Governor by
33 electing from its number a president, vice president, and a secretary
34 who shall also be the treasurer, who shall hold their respective
35 positions during the pleasure of the board. The board shall hold
36 one meeting during the first quarter of each calendar year at a time
37 and place designated by the board with power of adjournment from
38 time to time until its business is concluded. Special meetings of
39 the board may be held at such time and place as the board may
40 designate. Notice of each regular or special meeting shall be given

1 twice a week for two weeks next preceding each meeting in one
2 daily paper published in the City of San Francisco, one published
3 in the City of Sacramento, and one published in the City of Los
4 Angeles which notice shall also specify the time and place of
5 holding the examination of applicants. The secretary of the board
6 upon an authorization from the president of the board, or the
7 chairperson of the committee, may call meetings of any duly
8 appointed committee of the board at a specified time and place
9 and it shall not be necessary to advertise those committee meetings.

10 The board shall receive through its secretary applications for
11 certificates to be issued by the board and shall, on or before the
12 first day of January in each year, transmit to the Governor a full
13 report of all its proceedings together with a report of its receipts
14 and disbursements.

15 The office of the board shall be in the City of Sacramento.
16 Suboffices may be established in Los Angeles and San Francisco
17 and records as may be necessary may be transferred temporarily
18 to those suboffices. Legal proceedings against the board may be
19 instituted in any one of the three cities.

20 The board may from time to time adopt rules as may be necessary
21 to enable it to carry into effect the provisions of this act. It shall
22 require the affirmative vote of three members of the board to carry
23 any motion or resolution, to adopt any rules, pass any measure or
24 to authorize the issuance or the revocation of any certificate. Any
25 member of the board may administer oaths in all matters pertaining
26 to the duties of the board and the board shall have authority to take
27 evidence in any matter cognizable by it. The board shall keep an
28 official record of its proceedings, a part of which record shall
29 consist of a register of all applicants for certificates under this act
30 together with the action of the board upon each application.

31 The board shall have the power to employ legal counsel to advise
32 and assist it in connection with all matters cognizable by the board
33 or in connection with any litigation or legal proceedings instituted
34 by or against the board and may also employ clerical assistance
35 as it may deem necessary to carry into effect this act. The board
36 may fix the compensation to be paid for those services and may
37 incur other expense as it may deem necessary, provided, however,
38 that all of that expense shall be payable only from the fund
39 hereinbefore provided for and to be known as the Osteopathic
40 Medical Board of California Contingent Fund.

1 This section shall become operative on January 1, 2013.

2 SEC. 263. Section 1 of Chapter 226 of the Statutes of 2009 is
3 amended to read:

4 Section 1. (a) The Legislature finds and declares that it has
5 long been established in California that a horse racing association
6 and its parimutuel operation are actually only holding the stakes.
7 The funds wagered are not the property of the racing association.
8 The racing association merely holds the funds wagered until the
9 results of the race are known, then the association pays the winning
10 wagers, and holds funds for others pursuant to the California Horse
11 Racing Law. It has always been known that the funds due the
12 various distributees are not the property of the racing association.
13 The racing association is merely acting as a trustee until the funds
14 are paid to those as provided for in statute.

15 (b) It is therefore the intent of the Legislature that the purpose
16 of this act is not to change California law, but merely to codify
17 this trustee relationship.

18 SEC. 264. Section 2 of Chapter 405 of the Statutes of 2009 is
19 amended to read:

20 Sec. 2. Section 1.5 of this bill incorporates amendments to
21 Section 25660 of the Business and Professions Code proposed by
22 both this bill and AB 1191. It shall only become operative if (1)
23 both bills are enacted and become effective on or before January
24 1, 2010, (2) each bill amends Section 25660 of the Business and
25 Professions Code, and (3) this bill is enacted after AB 1191, in
26 which case Section 1 of this bill shall not become operative.

27 SEC. 265. Section 3 of Chapter 426 of the Statutes of 2009 is
28 amended to read:

29 Sec. 3. This act is an urgency statute necessary for the
30 immediate preservation of the public peace, health, or safety within
31 the meaning of Article IV of the Constitution and shall go into
32 immediate effect. The facts constituting the necessity are:

33 In order for the California Citrus Pest and Disease Prevention
34 Committee to, among other things, develop a work plan to deal
35 with the recent discovery in Santa Ana of Asian citrus psyllids, a
36 tiny insect that often carries citrus green disease, a pathogen that
37 has destroyed groves in Florida and wiped out much of the citrus
38 industries in China, India, Saudi Arabia, Egypt, and Brazil, it is
39 necessary for this act to take effect immediately.

1 SEC. 266. Any section of any act enacted by the Legislature
2 during the 2010 calendar year that takes effect on or before January
3 1, 2011, and that amends, amends and renumbers, adds, repeals
4 and adds, or repeals a section that is amended, amended and
5 renumbered, added, repealed and added, or repealed by this act,
6 shall prevail over this act, whether that act is enacted prior to, or
7 subsequent to, the enactment of this act. The repeal, or repeal and
8 addition, of any article, chapter, part, title, or division of any code
9 by this act shall not become operative if any section of any other
10 act that is enacted by the Legislature during the 2010 calendar year
11 and takes effect on or before January 1, 2011, amends, amends
12 and renumbers, adds, repeals and adds, or repeals any section
13 contained in that article, chapter, part, title, or division.

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